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# VIEWS OF SENTENCING: A SURVEY OF CROWN AND DEFENCE COUNSEL



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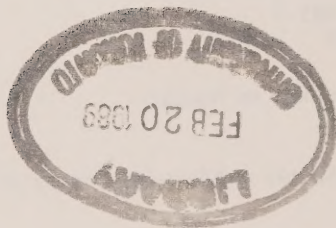
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**VIEWS OF SENTENCING:  
A SURVEY OF CROWN AND DEFENCE COUNSEL**

**Tammy Landau  
University of Toronto  
1988**



This report was written for the Canadian Sentencing Commission. The views expressed here are solely those of the authors and do not necessarily represent the views or policies of the Canadian Sentencing Commission or the Department of Justice Canada.

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## Foreword

This study is a revised version of a survey carried out for the Canadian Sentencing Commission in November, 1985. While the questionnaire was constructed by the research staff of the Canadian Sentencing Commission, the views in the present study are my own and do not necessarily reflect those of the Commission or the Department of Justice, Canada. The earlier, more detailed version is available through the Research and Development Directorate, Department of Justice, Canada.

I would like to thank the staff at the Centre of Criminology, University of Toronto, and Wendy Burgess, for their extensive support while the original study was being carried out. Finally, I would like to thank the various provincial agencies who assisted in constructing the sample of Crown attorneys and defense lawyers who received the questionnaire.

Tammy Landau

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## Executive Summary

In November of 1985, the Canadian Sentencing Commission mailed out questionnaires to 1608 Crown attorneys and defense lawyers in British Columbia, Alberta, Ontario, New Brunswick, Nova Scotia and Quebec. The questionnaire was designed to elicit views on certain practices and procedures in the sentencing process covering five general areas: sentence severity, sentencing variation, sentencing guidelines, plea negotiations and other sentencing issues. In all, 759 questionnaires were returned by February 15th, 1986. The final analyses are summarized in the following paragraphs.

### Sentence Severity

Defense counsel generally feel that the sentences handed down in the courts before which they appear are about right, while the sentences in courts across Canada are too severe. In contrast, the Crowns feel that the sentences handed down both in the courts before which they appear and across Canada are not severe enough. Defense counsel tend to favour abolishing the present mandatory minimum sentence for first degree murder, or reducing it to 15-25 years, leaving the actual sentence to be decided by the judge. The Crowns favour retaining the present mandatory minimum of 25 years.

### Sentence Variation

Most respondents feel that there is some unwarranted variation in sentences. This is more so the case for sentences handed down across Canada than in the respondents' own jurisdiction. A vast majority of all respondents attribute unwarranted variation to the different attitudes and/or approaches of judges to sentencing. Over half of all respondents endorse the view that the community is, at present, an important factor in determining sentence in some cases, and an equal

number stated that the community should be an important factor in some cases.

### Sentencing Guidelines

None of the alternatives presented received much support from respondents as ways of reducing unwarranted variation, with perhaps one exception: the Crowns favour 'guideline' decisions from the Court of Appeal. The alternative favoured least by both groups is using some form of mathematical equation in arriving at a sentence. Most respondents feel that, if there are to be guidelines, they should apply to all provinces, and that there should also be guidelines for non-carceral dispositions. The Crowns are more likely than are the defense to support the use of a list of aggravating and mitigating factors to be considered by the judge when imposing a sentence.

### Plea Negotiations

In general, a majority of respondents state that plea negotiations have a major impact on the sentencing process, and admitted that they engage in plea negotiations at least sometimes. The most frequent type of negotiations engaged in by both the defense and Crown are those in which submissions as to sentence are being discussed, while the least frequent are those in which the facts to be disclosed to the court are being discussed. Most respondents approve of negotiations between Crown and defense counsel. While the defense counsel approve of cases where judges give an advance indication of the sentences they are likely to give, Crowns generally do not. A majority of both groups disapprove of the judge participating in the negotiations.

There is the general belief that plea discussions are not more likely for offences with a mandatory minimum sentence, and that

mandatory minima occasionally or rarely cause Crown and defense counsel to enter into agreements that they would otherwise avoid. The vast majority responded that there are no offences which, as a matter of provincial policy, are never the subject of plea negotiations.

There is substantial support for a sentence discount for guilty pleas, and the large majority state that most plea negotiations are initiated by the defense. In the experience of most respondents, the judge is never directly involved in the negotiations, or is occasionally involved in either Chambers or in court.

The defense are of the view that an offender faces multiple charges relating to a single transaction in more than half of the cases that they handle, and that the police lay more (or more serious) charges to gain a stronger position in negotiations. The Crowns do not share these views. While only the defense feel that the police play an active or very active role in plea negotiations, both groups feel that the accused plays an insignificant role, or no role at all in such negotiations.

There is very little support for either legislative control or legislative prohibition of plea negotiations. There is the belief that judges generally favour submissions from both the defense and Crown as to the type or quantum of sentence to impose, and most respondents state that judges will always, or in most cases, accept a joint submission in cases where there have been plea negotiations.

#### Other Sentencing Issues

There is a substantial degree of consensus over which factors are, at present, important in determining sentence. The most important factors, according to both the defense and Crowns, are: the individual judge, the offender's criminal record, the particular offence, and the Appeal Court decisions from the respondents' own province. The factors



most frequently identified as not important are the legislated maximum penalty for the particular offence, and Appeal Court decisions from other provinces.

There was more variability in response to which factors should be considered important, although generalizations can be made. Both groups feel that the particular offence, and Appeal Court decisions from their own province should be very important, while the individual judge and the Crown or defense counsel should not be important at all.

A majority of respondents claim they can sometimes predict the sentence in cases where plea negotiations have not taken place. Crowns feel that re-classifying offences to adjust maximum penalties closer to sentences being imposed would not be useful, and both groups feel that the infrequent imposition of the maximum sentence conveys a false impression of sentencing to the general public.

Defense counsel feel that the present system of mandatory supervision should be retained, while the Crowns feel it should probably be discarded. However, both groups support some sort of earned remission. There is substantial support for changing the current system of parole, although a substantial percentage of Crowns also support abolishing the present system.

Both groups support some form of judicial control over parole and/or other early release decisions, although there is little consensus over whether this should take the form of specifying a minimum time to be served before eligibility for early release: in general, Crowns support this proposal while the defense counsel do not.



## Views on Sentencing:

### A Survey of Crown and Defense Counsel:

#### 1. Introduction

In May, 1984, the Government of Canada created the Canadian Sentencing Commission. It was given the mandate to conduct a comprehensive assessment of sentencing in Canada and to make recommendations on how the process should be improved. Of interest to the Commission were the views of critical actors in the administration of criminal justice, such as judges, Crown and defense counsel, and parole and probation officers. The present study is based on a survey of Crown and defense counsel conducted by the Commission as part of its research program.

#### 2. Methodology

In November, 1985, the Canadian Sentencing Commission mailed out 1608 questionnaires to defense lawyers and Crown attorneys in six provinces: British Columbia, Alberta, Ontario, New Brunswick, Nova Scotia and Quebec. A copy of the questionnaire is attached as Appendix A. The French version of the questionnaire, which was sent only to the Quebec sample, is attached as Appendix B. The sample of defense lawyers was based on membership in the provincial Criminal Lawyers' Associations for British Columbia, Alberta and Ontario. In Nova Scotia, the sample was based on participation in the provincial Legal Aid Plan, as there is no formal Criminal Lawyers' Association in that province. The list for the New Brunswick sample was obtained from a representative of the Regional Crown's Office. The sample of Crown Attorneys was based on lists obtained from Canada Law List (1985) for British Columbia, Alberta

and Ontario. Lists for the New Brunswick and Nova Scotia samples were obtained from the Department of the Attorney General for each province.

No reminder letter was sent out. All questionnaires returned to the Centre of Criminology, University of Toronto, by February 15th, 1986 were included in the final analyses.

The original study yielded responses from a total of 759 Crown and defense counsel across the six provinces. This constitutes an overall response rate of 47%. The number of respondents in each province, further broken down by type of practice, is summarized in Table 1. The "mixed" category refers to the 62 respondents who act as part-time Crowns, whether or not they also act for the defense. Since these individuals cannot be classified as either Crown or defense counsel, and interpretation of their responses as a unique group would be difficult, these data are not presented in the remaining tables. However, these data are included in the original report submitted to the Canadian Sentencing Commission and are available upon request from the Research and Development Directorate, Department of Justice, Canada.

### 3. Profile of Respondents

Table 2 presents the percentage of the respondents' practice which is spent on criminal cases, and Table 3 presents the number of years the respondents have been practicing criminal law. Over half of the defense counsel and almost all of the Crowns spend more than 50% of their time on criminal cases. A majority in both groups have been practicing criminal law for six years or more. It appears then, that the sampling procedure was successful in including experienced attorneys who practice mostly criminal law.

The remaining tables constitute a summary of the results for each



question. Each table presents the percentage of respondents from each province choosing each alternative. The results are presented separately for the defense and Crown, allowing comparisons both across and within categories. The total number of respondents in each table may vary as a result of missing data for individual questions.

#### 4. Sentence Severity

##### Overview

Defense counsel generally feel that the sentences handed down in the courts before which they appear are about right, while the sentences in courts across Canada are too severe. In contrast, the Crowns feel that the sentences handed down both in the courts before which they appear and across Canada are not severe enough. Defense counsel tend to favour abolishing the present mandatory minimum sentence for first degree murder, or reducing it to 15-25 years, leaving the actual sentence to be decided by the judge. The Crowns favour retaining the present mandatory minimum of 25 years.

\* \* \*

Over two-thirds of the sample of defense counsel endorse the view that the sentences handed down in the courts before which they appear are about right (Question 1 - see Table 4). This is particularly true in Quebec, where 81% feel that the sentences handed down are about right. Very few defense counsel (7%) feel that sentences are not severe enough. In contrast to the defense, almost two-thirds of the Crowns feel that the sentences in the courts before which they appear are not severe enough. New Brunswick is the exception to this, where 70% feel sentences are about right, although there are only 10 respondents in

this category. No Crowns responded that sentences are too severe.

There is a similar pattern of responses with respect to the sentences handed down by the courts across Canada (Question 2 - see Table 5): 59% of the defense are of the view that the sentences are about right, while 56% of the Crowns feel that the sentences are not severe enough. There is a slight increase in the percentage of defense counsel who responded that sentences are too severe. Again, no Crowns feel that sentences are too severe.

Defense counsel endorsed a wider range of alternatives for setting the mandatory minimum time to be served before parole eligibility for first degree murder (Question 3 - see Table 6). The alternative chosen most frequently by this group (by 43% of the sample) is to abolish the present mandatory minimum life penalty, and replace it with a maximum penalty of life, leaving the actual sentence to the discretion of the judge. This is true for all provinces except Nova Scotia, where reducing the mandatory minimum to 15-25 years, leaving the eligibility date to be set by the court, is the most frequently-selected alternative. One quarter of all defense also chose this option. Very few defense counsel favour a simple increase or decrease in the mandatory minimum sentence, although 23% favour retaining the present mandatory minimum sentence of 25 years.

Two-thirds of the Crown counsel favour retaining the present mandatory minimum sentence. This is most pronounced in British Columbia (75%) and New Brunswick (77%). Overall, the remaining options received relatively little support from this group.

## 5. Sentencing Variation

### Overview

Most respondents feel that there is some unwarranted variation in sentences. This is more so the case for sentences handed down across Canada than in the respondents' own jurisdiction. A vast majority of all respondents attribute unwarranted variation to the different attitudes and/or approaches of judges to sentencing. Over half of all respondents endorse the view that the community is, at present, an important factor in determining sentence in some cases, and an equal number stated that the community should be an important factor in some cases.

\* \* \*

In general, most respondents feel that there is some unwarranted variation in the sentences handed down in their own jurisdiction (Question 4 - see Table 7), with 75% of the defense, and 63% of the Crowns expressing this view. This is particularly true for the Nova Scotia Crowns (94%). However, 29% of the Crowns also feel that there is a great deal of unwarranted variation in sentencing in their own jurisdiction. There is generally more support for the view that there is a great deal of unwarranted variation in sentences across Canada (Question 5 - see Table 8), with approximately 40% of both the defense and Crowns responding this way. Very few stated that there was no unwarranted variation. Many respondents emphasized that they were referring to unwarranted variation by the courts, since a certain amount of variation is both warranted and expected.

In identifying the reasons for unwarranted variation (Question 6 -

see Table 9) a vast majority of respondents chose the different attitudes and/or approaches of judges to sentencing (alternative C), with roughly 90% of each group responding this way. No other alternative was chosen by more than 50% of the respondents in either group. However, over 40% of the defense feel that variation in the abilities of the Crown and defense counsel (alternative H) and the wide range of seriousness of behaviour that can constitute a specific offence (alternative J) are reasons for unwarranted variation. In addition, the defense are much more likely than are the Crowns to respond that the availability of legal representation for the accused (alternative I) is a factor. In contrast, 44% of the Crowns feel that a lack of consensus on how severe sentences generally should be is a reason for unwarranted variation (alternative D). Crowns are more likely than the defense to respond that lack of guidance from the Court of Appeal (alternative E) is a reason for unwarranted variation.

More than half of all respondents across both groups feel that the community is, in current practice, an important factor in the determination of the sentence (Question 7 - see Table 10). This is most marked for the defense in British Columbia (71%) and Nova Scotia (65%) and the Nova Scotia Crowns (74%). Thirty-six percent of the defense feel that the community is an important factor in most or all cases. Although very few respondents overall feel that the community is never or almost never an important factor, Crowns were more likely to express this view than the defense. Over half the respondents in each group feel that the community should be an important factor in the determination of sentence in some cases (Question 8 - see Table 12). The defense (at 30%) are only slightly more likely than the Crowns (at 22%) to feel that it should never or almost never be an important factor in any case.



## 6. Sentencing Guidelines

### Overview

None of the alternatives presented received much support from respondents as ways of reducing unwarranted variation, with perhaps one exception: the Crowns favour 'guideline' decisions from the Court of Appeal. The alternative favoured least by both groups is using some form of mathematical equation in arriving at a sentence. Most respondents feel that, if there are to be guidelines, they should apply to all provinces, and that there should also be guidelines for non-carceral dispositions. The Crowns are more likely than are the defense to support the use of a list of aggravating and mitigating factors to be considered by the judge when imposing sentence.

\* \* \*

It appears that none of the alternatives presented to the respondents as ways of reducing unwarranted variation is particularly popular (Question 9 - see Table 12). This is true for all groups, with one exception: 65% of the Crowns favour 'guideline' decisions from the Court of Appeal (alternative E). No other alternative is favoured by more than 37% of any group overall. This itself is the percentage of defense counsel who favour a more explicit list of purposes or principles that should be considered by the judge in determining the sentence (alternative C).

However, there are a few exceptions to this trend within response group: 50% of the defense in Ontario favour maintaining the present system of guidelines from the Court of Appeal (alternative A), and 62% of the defense in Quebec favour a more explicit list of purposes or

principles that should be considered by the judge in determining the sentence (alternative C). Fifty-six percent of this same group favour an explicit statement or system of weighing the factors to be considered by the judge in determining the sentence (alternative D).

The least favoured alternatives for the defense are a 'legislated' presumptive sentence for a particular offence (alternative F), and some form of mathematical equation for arriving at a sentence (alternative G). This is also the least favoured alternative for the Crowns. While a legislated presumptive sentence is viewed much more favourably by Crowns, the responses of the two groups did not differ greatly across the remaining alternatives.

The responses to Question 10 ("If there were to be guidelines, should the same guidelines apply to all provinces?") appear to be quite consistent across both groups (see Table 13): roughly half of the respondents in each group feel that any guidelines should apply to all provinces, although there might be some room for variation. The remainder largely responded that such guidelines should definitely apply to all provinces. In addition, over 50% in each group feel there should also be guidelines for non-carceral dispositions (Question 11 - see Table 14).

Sixty percent of the defense are opposed to a legislated list of aggravating and mitigating factors to be considered by the judge in the imposition of the sentence (Question 12 - see Table 15). This is true for only 47% of the Crowns. In contrast, 29% of the Crowns definitely favour a legislated list of factors, while only 15% of the defense feel this way.

## 7. Plea Negotiations

### Overview

In general, a majority of respondents state that plea negotiations have a major impact on the sentencing process, and admitted that they engage in plea negotiations at least sometimes. The most frequent type of negotiations engaged in by both the defense and Crown are those in which submissions as to sentence are being discussed, while the least frequent are those in which the facts to be disclosed to the court are being discussed. Most respondents approve of negotiations between Crown and defense counsel. While the defense counsel approve of cases where judges give an advance indication of the sentences they are likely to give, Crowns generally do not. A majority of both groups disapprove of the judge participating in the negotiations.

There is the general belief that plea discussions are not more likely for offences with a mandatory minimum sentence, and that mandatory minima occasionally or rarely cause Crown and defense counsel to enter into agreements that they would otherwise avoid. The vast majority responded that there are no offences which, as a matter of provincial policy, are never the subject of plea negotiations.

There is substantial support for a sentence discount for guilty pleas, and the large majority stated that most plea negotiations are initiated by the defense. In the experience of most respondents, the judge is never directly involved in the negotiations, or is occasionally involved in either Chambers or in court.

The defense are of the view that an offender faces multiple charges relating to a single transaction in more than half of the cases that they handle, and that the police lay more (or more serious) charges to gain a stronger position in negotiations. The Crowns do not share these

views. While only the defense feel that the police play an active or very active role in plea negotiations, both groups feel that the accused plays an insignificant role, or no role at all in such negotiations.

There is very little support for either legislative control or legislative prohibition of plea negotiations. There is the belief that judges generally favour submissions from both the defense and Crown as to the type or quantum of sentence to impose, and most respondents state that judges will always, or in most cases, accept a joint submission in cases where there have been plea negotiations.

\* \* \*

In general, respondents feel that plea negotiations have a major impact on the sentencing process (Question 13 - see Table 16). An exception to this is the New Brunswick sample, a majority of whom feel that plea negotiations have a minor impact on the sentencing process. Roughly three-quarters of the defense say they engage in plea negotiations frequently (Question 14 - see Table 17). This is true for only 57% of the Crowns, although an additional 32% say they sometimes participate in such negotiations. Very few respondents in the entire sample say they rarely or never participate in plea negotiations.

Over 60% of defense counsel frequently participate in negotiations where the exact charge is being discussed (Question 15 - see Table 18). This is true for only 37% of the Crowns: 26% say they rarely or never participate in such negotiations. However, 94% of the defense, and 87% of the Crowns say they sometimes or frequently participate in negotiations where the submission as to sentence are being discussed (Question 16 - see Table 19). Negotiations where the facts to be



disclosed to the court are being discussed appear to be engaged in the least frequently by both groups (Question 17 - see Table 20): 54% of the Crowns and 25% of the defense indicate that they rarely or never engage in such negotiations.

Almost all respondents in both groups approve or strongly approve of negotiations between defense and Crown counsel (Question 18(i) - see Table 21). While 78% of the defense approve or strongly approve of negotiations where judges give an advance indication of the sentence they are likely to give (Question 18(ii) - see Table 22), 64% of Crowns disapprove or strongly disapprove of such negotiations. There is only slightly more agreement over the case where judges participate in the negotiations (Question 18(iii) - see Table 23): 53% of the defense and 81% of the Crowns disapprove or strongly disapprove of this practice.

There is the general belief that plea negotiations are not more likely to occur for offences for which there is a mandatory minimum penalty (Question 19 - see Table 24). This is true for both groups, although for the Crown and defense, the British Columbia sample is somewhat divided on the issue. Roughly three-quarters of the respondents feel that mandatory minima occasionally or rarely cause Crown and defense counsel to enter into agreements that they would otherwise avoid (Question 20 - see Table 25). However, 24% of the defense sample feel that this is fairly often the case.

With the exception of New Brunswick, most respondents report that there are no offences which, as a matter of provincial policy, are never the subject of negotiations (Question 21 - see Table 26). In addition, over three-quarters of the respondents feel that there should be a sentence discount for a plea of guilty for all or some offences (Question 22 - see Table 27). Defense counsel are more likely to feel

that this should be the case for all offences (at 34%), while the Crowns are more inclined to support this for some offences only (62%).

Over 80% of both groups feel that most plea negotiations are initiated by counsel for the defense (Question 23 - see Table 28). In the experience of most respondents, judges do not, overall, play a very active role in these negotiations (Question 24 - see Table 29): 89% of both the defense and Crowns state that the judge is never directly involved, or is occasionally involved either in Chambers or in court. However, respondents from both Quebec and Ontario were less likely than respondents from other provinces to say that the judge is never involved.

While there is some variability across provinces, approximately three-quarters of the defense believe that an offender faces multiple charges relating to a single transaction in over 50% of the cases they handle (Question 25 - see Table 30). There is less support for this view from the defense in New Brunswick and from the Crowns in general. A similar pattern of responses is evident for Question 26 (see Table 31): 78% of the defense feel that police lay more (or more serious) charges in order to gain a stronger position in plea negotiations in most or many cases. In contrast, 63% of the defense in New Brunswick and 85% of all Crowns feel that this almost never occurs, or occurs in only a few cases.

While three-quarters of the defense counsel feel that the police play an active or very active role in plea negotiations, 64% of the Crowns feel that the police play an insignificant role or no role (Question 27 - see Table 32). The defense in New Brunswick share this view. This contrasts sharply with the consensus over the role of the

accused in plea negotiations (Question 28 - see Table 33): 69% of the defense, and 73% of the Crowns state that the accused plays an insignificant role or no role in such negotiations. There is very little support for either legislative control of plea negotiations (Question 29 - see Table 34) or legislative prohibition of plea negotiations (Question 30 - see Table 35).

Roughly half the respondents in each group state that the judges before whom they appear sometimes favour submissions from defense counsel as to the type of sentence, while the remainder feel that judges always favour such submissions (Question 31 - see Table 36). This was found for all groups except the Quebec sample, where such submissions are accepted less frequently, and the Nova Scotia Crowns, where such submissions are accepted on a much more frequent basis. The results are only slightly different for whether judges favour submissions from Crown counsel as to the type of sentence to impose (Question 32 - see Table 37): approximately 60% of the defense and Crowns state that such submissions are sometimes favoured. This is much more likely to be the case for the New Brunswick and Quebec samples. Very few respondents stated in either Question 31 or Question 32 that such submissions were never favoured.

Approximately 70% of respondents in both groups feel that the judges before whom they appear sometimes favour submissions from both the defense (Question 33 - see Table 38) and Crown (Question 34 - see Table 39) as to the quantum of sentence to impose. As in the previous questions, few respondents said that such submissions were never favoured by judges. A vast majority of respondents state that, in cases where there have been plea negotiations, the judge will always, or in most cases accept a joint submission if one is made (Question 35 -

see Table 40). Again, few respondents said that joint submissions are never or rarely accepted.

## 8. Other Sentencing Issues

### Overview

There is a substantial degree of consensus over which factors are, at present, important in determining sentence. The most important factors, according to both the defense and Crowns, are: the individual judge, the offender's criminal record, the particular offence, and the Appeal Court decisions from the respondents' own province. The factors most frequently identified as not important are the legislated maximum penalty for the particular offence, and Appeal Court decisions from other provinces.

There was more variability in response to which factors should be considered important, although generalizations can be made. Both groups feel that the particular offence, and Appeal Court decisions from their own province should be very important, while the individual judge and the Crown or defense counsel should not be important at all.

A majority of respondents claimed they can sometimes predict the sentence in cases where plea negotiations have not taken place. Crowns feel that re-classifying offences to adjust maximum penalties closer to sentences being imposed would not be useful, and both groups feel that the infrequent imposition of the maximum sentence conveys a false impression of sentencing to the general public.

Defense counsel feel that the present system of mandatory supervision should be retained, while the Crowns feel it should probably be discarded. However, both groups support some sort of earned remission. There is substantial support for changing the current system

of parole, although a substantial percentage of Crowns also support abolishing the present system.

Both groups support some form of judicial control over parole and/or other early release decisions, although there is little consensus over whether this should take the form of specifying a minimum time to be served before eligibility for early release: in general, Crowns support this proposal while the defense counsel do not.

\* \* \*

There is quite a bit of consensus among Crown and defense counsel over the importance of each of the factors presented in Question 36 ("At present, how important do you think each of the following factors is in determining sentence?" - see Table 41). Over 80% of both groups are of the view that the individual judge (factor D) is very important, and roughly 70% of each group believe that the offender's criminal record (factor G) is very important. Also considered very important, although to a lesser extent, are the particular offence (factor F) and the Appeal Court decisions from their own province (factor B). A notable exception to this last finding is Quebec, where fewer than 20% of respondents in each group feel that this a very important factor. Roughly 60% of respondents feel that characteristics other than the offender's criminal record (factor H), the frequency of the offence in the community (factor I), community values with respect to the offence (factor J), and Crown or defense counsel (factor E) are important. Many identified the legislated maximum penalty for the particular offence (factor A) and Appeal Court decisions from other provinces (factor C) as not important in determining sentence. None of the factors presented were frequently



rated as not important at all.

There is much more variability in response to how important the factors presented should be in determining sentence (Question 37 - see Table 42). Two factors are frequently identified: the particular offence (factor F) was identified by 66% of the defense and 83% of the Crowns, and Appeal Court decisions from their own province (factor B) was identified by 53% of the defense and 78% of the Crowns. In addition, 72% of the Crowns said the offender's criminal record (factor G) should be very important, although this factor is somewhat less important to the defense. Over 64% in each group feel that Appeal Court decisions from other provinces should be an important factor (factor C), and over 50% said that community values with respect to the offence (factor J) should be important. Again, roughly half of the respondents said that the legislated maximum penalty for a particular offence (factor A), characteristics of the offender other than the criminal record (factor H), and the frequency of the offence in the community (factor I) should be important in determining sentence. Clearly identified as factors which should not be important at all are the individual judge (factor D), and the Crown or defense counsel (factor E).

Slightly greater than 50% of both groups claim that they can sometimes predict the sentence that will be handed down in a particular case where there has been no plea negotiation (Question 38 - see Table 43). Over 50% of the defense feel that it would be useful to re-classify offences with maximum penalties geared closer to the sentences that are actually being imposed (Question 39 - see Table 44). However, 72% of the Crowns feel that this would not be useful. In general, respondents feel that the infrequent imposition of maximum sentences conveys a false impression of sentencing to the general public (Question

40 - see Table 45).

Seventy-one percent of the defense counsel and the Crowns from Quebec think that mandatory supervision, as it presently exists, should probably or definitely be retained, while 65% of the Crowns overall think it should probably not or definitely not be retained (Question 41 - see Table 46). However, over 90% of the defense and 72% of the Crowns support some form of earned remission (Question 42 - see Table 47). With respect to the current system of parole (Question 43 - see Table 48) defense counsel are divided on whether it should be changed (52%) or retained (42%). Over 60% of the Crowns think that the current system of parole should be changed and an additional 25% of Crowns think it should be abolished.

There was a relatively large number of respondents who specified what they would change about the current system of parole (n=383, Question 44 - not presented in Table form). Of these, 48% (including 130 Crowns) suggested changing the procedures for early release, such as requiring remission to be earned, raising the proportion of the sentence that must be served before eligibility, and making the time served reflect more closely the actual sentence imposed. Twelve percent suggested making release conditions fairer, i.e. making hearings public, increasing the accountability of the Parole Board and changing the criteria for appointment to the Parole Board.

There is general support for some form of judicial control over parole and/or other early release decisions (Question 45 - see Table 49). While approximately 55% of defense counsel support the idea, the same is true for 73% of the Crowns. However, the groups tend to be divided on whether judicial control should be limited to certain kinds

of offences (Question 46 - see Table 50). The pattern of responses by the defense to Question 47 - whether the sentencing judge should be able to specify a minimum time to be served before eligibility for early release (see Table 51) are quite uneven. However, 66% of the defense counsel overall do not support this proposal, while almost 80% of the Crowns do.

Respondents tended not to comment on the role of the Crown or the role of the defense in sentencing (Questions 48 and 49). As a result, no systematic data for these questions were obtained.

## 9. Conclusion

It is apparent from the responses to these questions that Crown attorneys and defense lawyers hold very different opinions on most issues surveyed. This is particularly evident in their support for ways of dealing with unwarranted variation in sentences and their attitudes toward sentencing guidelines: Crowns tend to favour reforms that would add structure and predictability to the process, while the defense appear to be generally satisfied with the discretionary nature of the present structure. Indeed, similar response patterns are evident with respect to other issues, such as plea negotiations and mechanisms for early release. In light of this, it would be interesting to assess the opinions of these two groups on the final recommendations of the Canadian Sentencing Commission, particularly for guidelines in sentencing, and the reform of existing early release procedures.

TABLE 1

Number of Respondents in Each Province, By Group

PROVINCE	GROUPS			Number of Respondents	Response Rate (%)
	Defense	Crown	Mixed		
British Columbia	83	77	20	180	37
Alberta	42	54	6	102	46
Ontario	139	123	30	292	48
New Brunswick	8	10	1	19	30
Nova Scotia	31	19	3	53	29
Quebec	39	72	2	113	25
TOTAL	342	355	62	759	47

TABLE 2

Percentage of Practice Spent on Criminal Cases, By Group

GROUP	PERCENTAGE			TOTAL	N
	25% or less	26%-50%	51% or more		
Defense	17.5	24.7	57.7	100.00	336
Crown	.9	.6	98.6	100.00	350



TABLE 3

Number of Years Practicing Criminal Law, By Group

GROUP	YEARS			TOTAL	N
	5 yrs. or less	6-10 yrs.	11 yrs. or more		
Defense	33.9	36.6	29.5	100.00	339
Crown	30.5	38.7	30.8	100.00	354

TABLE 4

Perceived Severity of Sentences

In Respondents' Own Jurisdiction

1. Would you say that sentences handed down by the courts before which you appear are:  
 Croyez-vous que les peines prononcées par les tribunaux devant lesquels vous plaidez sont:

- 1 - too severe/trop sévères  
 2 - about right/plutôt justes  
 3 - not severe enough/pas assez sévères  
 4 - depends/dépend

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	20.73	64.63	13.41	1.22	100.00	82
Alberta	41.46	46.34	2.44	9.76	100.00	41
Ontario	22.79	70.59	3.68	2.94	100.00	136
New Brunswick	12.50	75.00	12.50	.00	100.00	8
Nova Scotia	6.67	76.67	13.33	3.33	100.00	30
Quebec	10.53	81.58	5.26	2.63	100.00	38
TOTAL	21.49	68.06	7.16	3.28	100.00	335

CROWN	1	2	3	4	TOTAL	N
British Columbia	0.0	41.33	54.67	4.00	100.00	75
Alberta	0.0	46.30	51.85	1.85	100.00	54
Ontario	0.0	28.46	68.29	3.25	100.00	123
New Brunswick	0.0	70.00	30.00	.00	100.00	10
Nova Scotia	0.0	42.11	52.63	3.26	100.00	19
Quebec	0.0	26.76	73.24	.00	100.00	71
TOTAL	0.0	35.51	61.93	2.56	100.00	352

TABLE 5

Perceived Severity of Sentences

Across Canada

2. In general, would you say that sentences handed down by the courts across Canada are:  
 En général, diriez-vous que les peines prononcées par les tribunaux à travers le Canada sont:

- 1 - too severe/trop sévères  
 2 - about right/plutôt justes  
 3 - not severe enough/pas assez sévères  
 4 - depends/dépend

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	25.00	59.21	14.47	1.32	100.00	76
Alberta	20.59	61.76	8.82	8.82	100.00	34
Ontario	37.40	57.72	4.07	.81	100.00	123
New Brunswick	.00	85.71	14.29	.00	100.00	7
Nova Scotia	10.00	66.67	20.00	3.33	100.00	30
Quebec	47.37	47.37	5.26	.00	100.00	38
TOTAL	30.19	58.77	9.09	1.95	100.00	308

CROWN	1	2	3	4	TOTAL	N
British Columbia	0.0	51.43	45.71	2.86	100.00	70
Alberta	0.0	41.18	58.82	.00	100.00	51
Ontario	0.0	30.17	68.97	.86	100.00	116
New Brunswick	0.0	40.00	60.00	.00	100.00	10
Nova Scotia	0.0	29.41	64.71	5.88	100.00	17
Quebec	0.0	60.00	40.00	.00	100.00	65
TOTAL	0.0	42.55	56.23	1.22	100.00	329

TABLE 6

Options Favoured For Setting the Mandatory Minimum

Sentence for First Degree Murder

3. Which one of the following options would you favour in setting the mandatory minimum time to be served before eligibility for parole consideration for first degree murder?

Laquelle des options suivantes favorisez-vous pour ce qui est de la durée minimale d'incarcération que doit purger un détenu coupable de meurtre au premier degré avant d'être éligible à la libération conditionnelle?

- 1 - retain the present mandatory minimum of 25 years/conservier la peine minimale actuelle d'une durée de 25 ans
- 2 - increase the present mandatory minimum of 25 years/augmenter la durée de la peine minimale actuelle
- 3 - reduce the present mandatory minimum of 25 years/réduire la durée de la peine minimale actuelle
- 4 - reduce the mandatory minimum to 15-25 years, leaving the parole eligibility date to be set by the court (as in 2nd degree murder)/réduire la durée minimale actuelle à un intervalle de 15/25 ans, laissant au juge la discrétion de fixer la date d'éligibilité pour la libération conditionnelle, comme c'est actuellement le cas pour le meurtre au second degré
- 5 - abolish the mandatory minimum life penalty, replace it with a maximum penalty of life, leaving the actual sentence to the discretion of the judge/abolir l'actuelle peine minimale de 25 ans et la remplacer par une sentence maximale d'incarcération à vie, en laissant au juge la discrétion de déterminer la durée effective de la peine

DEFENSE	1	2	3	4	5	TOTAL	N
British Columbia	28.75	6.25	2.50	18.75	43.75	100.00	80
Alberta	25.71	.00	.00	28.57	45.71	100.00	35
Ontario	22.39	4.48	5.22	28.36	39.55	100.00	134
New Brunswick	25.00	25.00	.00	12.50	37.50	100.00	8
Nova Scotia	31.03	3.45	3.45	34.48	27.59	100.00	29
Quebec	10.53	.00	.00	26.32	63.16	100.00	38
TOTAL	23.77	4.32	3.09	25.93	42.90	100.00	324

CROWN	1	2	3	4	5	TOTAL	N
British Columbia	75.68	9.46	1.35	6.76	6.76	100.00	74
Alberta	56.25	31.25	.00	2.08	10.42	100.00	48
Ontario	66.37	19.47	.88	8.83	4.42	100.00	113
New Brunswick	77.78	22.22	.00	.00	.00	100.00	9
Nova Scotia	61.11	22.22	.00	.00	16.67	100.00	18
Quebec	58.82	2.94	1.47	16.18	20.59	100.00	68
TOTAL	65.45	15.76	.91	8.18	9.70	100.00	350

TABLE 7

## Perceived Amount of Unwarranted Variation in Sentences

## In Respondents' Own Jurisdiction

4. Do you think that there is unwarranted variation in the sentences handed down in your jurisdiction?

Croyez-vous qu'il existe une variation injustifiée (disparité) dans les peines prononcées dans la juridiction dans laquelle vous exercez votre pratique?

- 1 - there is a great deal of unwarranted variation/oui, il y a beaucoup de variation injustifiée  
 2 - there is some unwarranted variation/il y a un certain degré de variation injustifiée  
 3 - there is no unwarranted variation/non, il n'y a pas de variation injustifiée

<u>DEFENSE</u>	1	2	3	TOTAL	N
British Columbia	14.81	75.31	9.88	100.00	81
Alberta	23.81	71.43	4.76	100.00	42
Ontario	22.46	73.19	4.35	100.00	138
New Brunswick	12.50	87.50	.00	100.00	8
Nova Scotia	16.13	74.19	9.68	100.00	31
Quebec	13.16	78.95	7.89	100.00	38
TOTAL	18.93	74.56	6.51	100.00	338

<u>CROWN</u>	1	2	3	TOTAL	N
British Columbia	33.77	63.64	2.60	100.00	77
Alberta	24.53	67.92	7.55	100.00	53
Ontario	27.64	60.98	11.38	100.00	123
New Brunswick	20.00	60.00	20.00	100.00	10
Nova Scotia	5.56	94.44	.00	100.00	18
Quebec	35.21	54.93	9.86	100.00	71
TOTAL	28.69	63.07	8.24	100.00	352



TABLE 8

Perceived Amount of Unwarranted Variation in Sentences

Across Canada

5. Do you think that there is unwarranted variation in the sentences handed down across Canada?

Croyez-vous qu'il existe une variation injustifiée (disparité) dans les peines qui sont prononcées par les tribunaux canadiens, considérés dans leurs ensemble?

1 - there is a great deal of unwarranted variation/oui, il y a beaucoup de variation injustifiée

2 - there is some unwarranted variation/il y un certain degré de variation injustifiée

3 - there is no unwarranted variation/non, il n'y a pas de variation injustifiée

DEFENSE	1	2	3	TOTAL	N
British Columbia	24.00	73.33	2.67	100.00	75
Alberta	41.03	56.41	2.56	100.00	39
Ontario	47.24	49.61	3.15	100.00	127
New Brunswick	42.86	57.14	.00	100.00	7
Nova Scotia	37.93	58.62	3.45	100.00	29
Quebec	47.37	50.00	2.63	100.00	38
TOTAL	40.00	57.14	2.86	100.00	315

CROWN	1	2	3	TOTAL	N
British Columbia	34.78	63.77	1.45	100.00	69
Alberta	34.69	59.18	6.12	100.00	49
Ontario	48.70	51.30	.00	100.00	115
New Brunswick	44.44	55.56	.00	100.00	9
Nova Scotia	37.50	62.50	.00	100.00	16
Quebec	40.91	53.03	6.06	100.00	66
TOTAL	41.36	56.17	2.47	100.00	324

TABLE 9

## Perceived Reasons for Unwarranted

## Variation in Sentencing

6. If you think that there is a problem of unwarranted variation in sentencing, which of the following do you think are reasons for this problem (check all that apply)?

Si vous croyez qu'il existe un problème relatif à la variation injustifiée (disparité) dans la détermination des peines, quelles sont les raisons de ce problème (indiquez dans la liste qui suit toutes les raisons qui vous semblent pertinentes)?

- A - lack of consensus on the specific purpose(s) of sentencing/un manque de consensus sur le ou les buts spécifiques de la détermination des peines  
 B - lack of consensus on the important factors to be considered in sentencing/un manque de consensus sur les facteurs qui doivent être considérés importants dans la détermination d'une peine  
 C - different personal attitudes and/or approaches of judges to sentencing/les attitudes personnelles et les approches différentes de la part des juges qui déterminent les peines  
 D - lack of consensus on how severe sentences generally should be/un manque de consensus sur la sévérité que devraient généralement revêtir les peines  
 E - lack of guidance from the Court of Appeal/un manque de directives des cours d'Appel  
 F - lack of legislative guidance/un manque de guidance législatives  
 G - lack of information available to judges about sentencing practices/un manque d'information des juges sur les pratiques de leurs confrères en matière de détermination de la peine  
 H - variation in the abilities of Crown and defense counsel/des différences dans les aptitudes des procureurs de la Couronne et de la défense  
 I - availability of legal representation for the accused/la possibilité pour un accusé (ou un condamné) d'être légalement représenté devant le tribunal  
 J - the wide range of seriousness of behaviour that can constitute a specific offence/les grandes différences de gravité entre les divers comportements criminels qui sont susceptibles de recevoir la même étiquette légale (par ex. le vol qualifié)

1=yes/oui

2=no/non

DEFENSE	A				B				C			
	1	2	TOTAL	N	1	2	TOTAL	N	1	2	TOTAL	N
British Columbia	32.53	67.47	100.00	83	22.89	77.11	100.00	83	83.13	16.87	100.00	83
Alberta	33.33	66.67	100.00	42	23.81	76.19	100.00	42	95.24	4.76	100.00	42
Ontario	26.62	73.38	100.00	139	16.55	83.45	100.00	139	89.93	10.07	100.00	139
New Brunswick	12.50	87.50	100.00	8	25.00	75.00	100.00	8	87.50	12.50	100.00	8
Nova Scotia	16.13	83.87	100.00	31	12.90	87.10	100.00	31	93.55	6.45	100.00	31
Quebec	35.90	64.10	100.00	39	23.08	76.92	100.00	39	87.18	12.82	100.00	39
<b>TOTAL</b>	<b>28.65</b>	<b>71.35</b>	<b>100.00</b>	<b>342</b>	<b>19.59</b>	<b>80.41</b>	<b>100.00</b>	<b>342</b>	<b>88.89</b>	<b>11.11</b>	<b>100.00</b>	<b>342</b>

CROWN	A				B				C			
	1	2	TOTAL	N	1	2	TOTAL	N	1	2	TOTAL	N
British Columbia	27.27	72.73	100.00	77	25.97	74.03	100.00	77	93.51	6.49	100.00	77
Alberta	27.78	72.22	100.00	54	25.93	74.07	100.00	54	85.19	14.81	100.00	54
Ontario	22.76	77.24	100.00	123	23.58	76.42	100.00	123	91.06	8.94	100.00	123
New Brunswick	40.00	60.00	100.00	10	20.00	80.00	100.00	10	100.00	.00	100.00	10
Nova Scotia	5.26	94.74	100.00	19	15.79	84.21	100.00	19	94.74	5.26	100.00	19
Quebec	45.83	54.17	100.00	72	36.11	63.89	100.00	72	88.89	11.11	100.00	72
<b>TOTAL</b>	<b>28.73</b>	<b>71.27</b>	<b>100.00</b>	<b>355</b>	<b>26.48</b>	<b>73.52</b>	<b>100.00</b>	<b>355</b>	<b>90.70</b>	<b>9.30</b>	<b>100.00</b>	<b>355</b>

TABLE 9 (cont'd)

DEFENSE	D				E				F			
	1	2	TOTAL	N	1	2	TOTAL	N	1	2	TOTAL	N
British Columbia	30.12	69.88	100.00	83	8.45	91.57	100.00	83	14.46	85.54	100.00	83
Alberta	30.95	69.05	100.00	42	14.29	85.71	100.00	42	9.52	90.48	100.00	42
Ontario	31.65	68.35	100.00	139	10.07	89.93	100.00	139	14.39	85.61	100.00	139
New Brunswick	25.00	75.00	100.00	8	.00	100.00	100.00	8	.00	100.00	100.00	8
Nova Scotia	38.71	61.29	100.00	31	12.90	87.10	100.00	31	16.13	83.87	100.00	31
Quebec	25.64	74.36	100.00	39	20.51	79.49	100.00	39	17.95	82.05	100.00	39
<b>TOTAL</b>	<b>30.99</b>	<b>69.01</b>	<b>100.00</b>	<b>342</b>	<b>11.40</b>	<b>88.60</b>	<b>100.00</b>	<b>342</b>	<b>14.04</b>	<b>85.96</b>	<b>100.00</b>	<b>342</b>

CROWH	D				E				F			
	1	2	TOTAL	N	1	2	TOTAL	N	1	2	TOTAL	N
British Columbia	45.45	54.55	100.00	77	19.48	80.52	100.00	77	24.68	75.32	100.00	77
Alberta	35.19	64.81	100.00	54	31.48	68.52	100.00	54	20.37	79.63	100.00	54
Ontario	46.34	53.66	100.00	123	27.64	72.36	100.00	123	20.33	79.67	100.00	123
New Brunswick	50.00	50.00	100.00	10	50.00	50.00	100.00	10	30.00	70.00	100.00	10
Nova Scotia	21.05	78.95	100.00	19	31.58	68.42	100.00	19	26.52	73.48	100.00	19
Quebec	50.00	50.00	100.00	72	51.39	48.61	100.00	72	20.83	79.17	100.00	72
<b>TOTAL</b>	<b>43.94</b>	<b>56.06</b>	<b>100.00</b>	<b>355</b>	<b>31.55</b>	<b>68.45</b>	<b>100.00</b>	<b>355</b>	<b>21.97</b>	<b>78.03</b>	<b>100.00</b>	<b>355</b>

DEFENSE	G				H				I			
	1	2	TOTAL	N	1	2	TOTAL	N	1	2	TOTAL	N
British Columbia	8.45	91.57	100.00	83	33.73	66.27	100.00	83	37.35	62.65	100.00	83
Alberta	14.29	85.71	100.00	42	40.48	59.52	100.00	42	30.95	69.05	100.00	42
Ontario	17.99	82.01	100.00	139	43.88	56.12	100.00	139	18.71	81.29	100.00	139
New Brunswick	.00	100.00	100.00	8	37.50	62.50	100.00	8	12.50	87.50	100.00	8
Nova Scotia	9.68	90.32	100.00	31	29.03	70.97	100.00	31	22.58	77.42	100.00	31
Quebec	25.64	74.36	100.00	39	56.41	43.59	100.00	39	5.13	94.87	100.00	39
<b>TOTAL</b>	<b>14.91</b>	<b>85.09</b>	<b>100.00</b>	<b>342</b>	<b>40.94</b>	<b>59.06</b>	<b>100.00</b>	<b>342</b>	<b>23.39</b>	<b>76.61</b>	<b>100.00</b>	<b>342</b>

CROWH	G				H				I			
	1	2	TOTAL	N	1	2	TOTAL	N	1	2	TOTAL	N
British Columbia	5.19	94.81	100.00	77	25.97	74.03	100.00	77	1.30	98.70	100.00	77
Alberta	9.26	90.74	100.00	54	22.22	77.78	100.00	54	5.56	94.44	100.00	54
Ontario	6.50	93.50	100.00	123	18.70	81.30	100.00	123	1.63	98.37	100.00	123
New Brunswick	10.00	90.00	100.00	10	10.00	90.00	100.00	10	10.00	90.00	100.00	10
Nova Scotia	.00	100.00	100.00	15	15.79	84.21	100.00	19	.00	100.00	100.00	19
Quebec	16.67	83.33	100.00	72	31.94	68.06	100.00	72	1.39	98.61	100.00	72
<b>TOTAL</b>	<b>8.45</b>	<b>91.55</b>	<b>100.00</b>	<b>355</b>	<b>23.10</b>	<b>76.90</b>	<b>100.00</b>	<b>355</b>	<b>2.25</b>	<b>97.75</b>	<b>100.00</b>	<b>355</b>

TABLE 9 (cont'd)

DEFENSE	J		TOTAL	N
	1	2		
British Columbia	43.37	59.83	100.00	8
Alberta	47.62	52.38	100.00	42
Ontario	45.32	54.68	100.00	139
New Brunswick	50.00	50.00	100.00	8
Nova Scotia	35.48	64.52	100.00	31
Quebec	53.85	46.15	100.00	39
TOTAL	45.32	54.68	100.00	342

CROWN	J		TOTAL	N
	1	2		
British Columbia	38.96	61.04	100.00	77
Alberta	35.19	64.81	100.00	54
Ontario	36.59	63.41	100.00	123
New Brunswick	40.00	60.00	100.00	10
Nova Scotia	42.11	57.89	100.00	19
Quebec	34.72	65.28	100.00	72
TOTAL	36.90	63.10	100.00	355

TABLE 10

Perceptions of the Importance of the Community  
In Current Sentencing Practice

7. Do you think that the community in which a person lives (or in which an offence took place) is, in current practice, an important factor in the determination of the sentence?

Pensez-vous que le type de communauté dans lequel une personne réside (ou dans lequel une infraction a été commise) est effectivement, dans la pratique actuelle, un facteur important dans la détermination des peines?

1 - yes, it is an important factor in most or all cases/oui, c'est un facteur important dans les tous ou la plupart des cas

2 - it is an important factor in some cases/c'est un facteur important dans quelques cas

3 - no, it is never or almost never an important factor in any case/non, ce n'est jamais ou presque jamais un facteur important

DEFENSE	1	2	3	TOTAL	N
British Columbia	25.61	70.73	3.66	100.00	82
Alberta	33.33	57.14	9.52	100.00	42
Ontario	40.74	52.59	6.67	100.00	135
New Brunswick	50.00	37.50	12.50	100.00	8
Nova Scotia	25.81	64.52	9.68	100.00	31
Quebec	45.95	48.65	5.41	100.00	37
TOTAL	35.52	57.91	6.57	100.00	335

CROWN	1	2	3	TOTAL	N
British Columbia	20.78	63.64	15.58	100.00	77
Alberta	16.98	67.92	15.09	100.00	53
Ontario	30.58	58.68	10.74	100.00	121
New Brunswick	33.33	44.44	22.22	100.00	9
Nova Scotia	5.26	73.68	21.05	100.00	19
Quebec	27.78	50.00	22.22	100.00	72
TOTAL	24.50	59.83	15.67	100.00	351



TABLE 11

## Views on How Important the Community Should Be

## In The Determination of Sentence

8. Do you think that the community in which a person lives (or in which an offence took place) should be an important factor in the determination of the sentence?

Pensez-vous que le type de communauté dans lequel une personne réside (ou dans lequel une infraction a été commise) devrait être un facteur important dans la détermination de la peine?

- 1 - yes, it should be an important factor in most or all cases/oui, ce devrait être un facteur important dans tous ou la plupart des cas  
 2 - it should be an important factor in some cases/ce devrait être un facteur important dans quelques cas  
 3 - no, it should never or almost never be an important factor in any case/non, ce ne devrait pas être jamais ou presque jamais un facteur important

<u>DEFENSE</u>	1	2	3	TOTAL	N
British Columbia	15.85	54.88	29.27	100.00	82
Alberta	26.19	57.14	16.67	100.00	42
Ontario	11.76	51.47	36.76	100.00	136
New Brunswick	.00	75.00	25.00	100.00	8
Nova Scotia	9.68	54.84	35.48	100.00	31
Quebec	21.62	59.46	18.92	100.00	37
TOTAL	15.18	54.76	30.06	100.00	336

<u>CROWN</u>	1	2	3	TOTAL	N
British Columbia	18.42	59.21	22.37	100.00	76
Alberta	13.21	64.15	22.64	100.00	53
Ontario	22.31	59.50	18.18	100.00	121
New Brunswick	20.00	30.00	50.00	100.00	10
Nova Scotia	15.79	57.89	26.32	100.00	19
Quebec	19.44	58.33	22.22	100.00	72
TOTAL	19.09	58.97	21.94	100.00	351

TABLE 12

Options Favoured as Ways of Reducing Unwarranted Variation

9. Which of the following ways of reducing unwarranted variation in sentences would you favour?

Lequel (ou lesquels) parmi les moyens qui suivent favoriserez-vous pour réduire la variation injustifiée dans le détermination des peines?

- A - the present system of guidance from the Court of Appeal in your province/le système de directives actuel de la part de la Cour d'Appel de votre province
- B - an informal understanding among judges regarding what an average sentence should be for an offence, based on statistical analysis of current sentencing practice/une entente tacite entre les juges sur la sentence moyenne que réclame une infraction donnée (cette entente serait fondée sur une analyse statistique des pratiques courantes en matière de détermination de la peine)
- C - a more explicit list of purposes or principles that should be considered by the judge in determining the sentence/un énoncé plus explicite des objectifs et es principes qui devraient être pris en compte par le juge en déterminant sa sentence
- D - an explicit statement or system of weighing the factors to be considered by the judge in determining the sentence/un système de pondération plus précis des facteurs qui devraient être pris en compte par le juge en déterminant sa sentence
- E - "guideline" decisions which might come from the Court of Appeal of your province which might state, for example, the appropriate sentence for certain specific types of offences or the minimum "starting point" for particular kinds of cases/des lignes directrices énoncées par la Cour d'Appel dans le cadre d'un jugement dans une cause (ce type de jugement pourrait, par exemple, déterminer la peine appropriée pour un type donné d'infraction ou fixer le seuil de sévérité à partir duquel une peine est proportionnée à la gravité d'une infraction)
- F - a legislated "presumptive sentence" or range of sentences for the "normal" or "average" instance of a particular offence/une sentence "présomptive" ou une gamme de sentences fixées par la loi pour les occurrences "normales" ou habituelles d'un type donné d'infraction
- G - some form of mathematical equation combining a number of different aspects of the case in such a way that each factor is given a specific weight in arriving at a sentence (e.g. a sentencing grid)/une procédure mathématique qui combine divers facteurs caractérisant une infraction criminelle et qui proportionnée à l'infraction commise et aux circonstances qui la définissent (par ex. une "grille" de détermination de la peine comme il s'en trouve dans divers états américains)

1=yes/oui      2=no/non

DEFENSE	A			N	B			N	C			N
	1	2	TOTAL		1	2	TOTAL		1	2	TOTAL	
British Columbia	28.92	71.08	100.00	83	25.30	74.70	100.00	83	32.53	67.47	100.00	83
Alberta	28.57	71.43	100.00	42	19.05	80.95	100.00	42	35.71	64.29	100.00	42
Ontario	50.36	49.64	100.00	139	15.11	84.89	100.00	139	35.97	64.03	100.00	139
New Brunswick	100.00	100.00	100.00	8	25.00	75.00	100.00	8	50.00	50.00	100.00	8
Nova Scotia	29.03	70.97	100.00	31	25.81	74.19	100.00	31	22.58	77.42	100.00	31
Quebec	12.82	87.18	100.00	39	20.51	79.49	100.00	39	61.54	38.46	100.00	39
TOTAL	35.09	64.91	100.00	342	19.88	80.12	100.00	342	37.13	62.87	100.00	342
CROWN				N				N				N
	1	2	TOTAL		1	2	TOTAL		1	2	TOTAL	
British Columbia	45.45	54.55	100.00	77	28.57	71.43	100.00	77	23.38	76.62	100.00	77
Alberta	37.04	62.96	100.00	54	33.33	66.67	100.00	54	27.78	72.22	100.00	54
Ontario	25.20	74.80	100.00	123	15.45	84.55	100.00	123	26.02	73.98	100.00	123
New Brunswick	20.00	80.00	100.00	10	30.00	70.00	100.00	10	30.00	70.00	100.00	10
Nova Scotia	26.32	73.68	100.00	19	31.58	68.42	100.00	19	15.79	84.21	100.00	19
Quebec	26.39	73.61	100.00	72	47.22	52.78	100.00	72	41.67	58.33	100.00	72
TOTAL	31.55	68.45	100.00	355	28.73	71.27	100.00	355	28.45	71.55	100.00	355

TABLE 12 (cont'd)

DEFENSE	D		TOTAL	N	E		TOTAL	N
	1	2			1	2		
British Columbia	22.89	77.11	100.00	83	26.51	73.49	100.00	83
Alberta	30.95	69.05	100.00	42	28.57	71.43	100.00	42
Ontario	24.46	75.54	100.00	39	26.62	73.38	100.00	139
New Brunswick	25.00	75.00	100.00	8	12.50	87.50	100.00	8
Nova Scotia	12.90	87.10	100.00	31	41.94	58.06	100.00	31
Quebec	56.41	43.59	100.00	39	15.38	84.62	100.00	39
<b>TOTAL</b>	<b>27.49</b>	<b>72.51</b>	<b>100.00</b>	<b>342</b>	<b>26.61</b>	<b>73.39</b>	<b>100.00</b>	<b>342</b>

CROWN	D		TOTAL	N	E		TOTAL	N
	1	2			1	2		
British Columbia	14.29	85.71	100.00	77	67.53	32.47	100.00	77
Alberta	18.52	81.48	100.00	54	72.22	27.78	100.00	54
Ontario	24.39	75.61	100.00	123	62.60	37.40	100.00	123
New Brunswick	20.00	80.00	100.00	10	70.00	30.00	100.00	10
Nova Scotia	15.79	84.21	100.00	19	73.68	26.32	100.00	19
Quebec	20.83	79.17	100.00	72	56.94	43.06	100.00	72
<b>TOTAL</b>	<b>20.00</b>	<b>80.00</b>	<b>100.00</b>	<b>355</b>	<b>64.79</b>	<b>35.21</b>	<b>100.00</b>	<b>355</b>

DEFENSE	F		TOTAL	N	G		TOTAL	N
	1	2			1	2		
British Columbia	4.82	95.18	100.00	83	6.02	93.98	100.00	83
Alberta	7.14	92.86	100.00	42	2.38	97.62	100.00	42
Ontario	9.35	90.65	100.00	139	6.47	93.53	100.00	139
New Brunswick	.00	100.00	100.00	8	12.50	87.50	100.00	8
Nova Scotia	16.13	83.87	100.00	31	3.23	96.77	100.00	31
Quebec	15.38	84.62	100.00	39	12.82	87.18	100.00	39
<b>TOTAL</b>	<b>9.06</b>	<b>90.94</b>	<b>100.00</b>	<b>342</b>	<b>6.43</b>	<b>93.57</b>	<b>100.00</b>	<b>342</b>

CROWN	F		TOTAL	N	G		TOTAL	N
	1	2			1	2		
British Columbia	31.17	68.83	100.00	77	6.49	93.51	100.00	77
Alberta	22.22	77.78	100.00	54	9.26	90.74	100.00	54
Ontario	28.46	71.54	100.00	123	6.50	93.50	100.00	123
New Brunswick	10.00	90.00	100.00	10	10.00	90.00	100.00	10
Nova Scotia	31.58	68.42	100.00	19	3.26	96.74	100.00	19
Quebec	22.22	77.78	100.00	72	19.44	80.56	100.00	72
<b>TOTAL</b>	<b>26.48</b>	<b>73.52</b>	<b>100.00</b>	<b>355</b>	<b>9.38</b>	<b>90.62</b>	<b>100.00</b>	<b>355</b>

TABLE 13

Views on Whether the Same Guidelines Should Apply

To All Provinces

10. If there were to be guidelines, should the same guidelines apply to all provinces?

Si l'on établissait, sous une forme ou une autre, des lignes directrices en matière de détermination de la peine, est-ce que ces lignes directrices devraient être les mêmes dans chacune des provinces canadiennes?

1 - definitely yes/oui, absolument

2 - generally yes, but there might be some room for variation/oui, généralement; on devrait ménager une marge de variation

3 - no/non

<u>DEFENSE</u>	1	2	3	TOTAL	N
British Columbia	41.25	55.00	3.75	100.00	80
Alberta	36.59	53.66	9.76	100.00	41
Ontario	47.79	47.79	4.41	100.00	136
New Brunswick	62.50	37.50	.00	100.00	8
Nova Scotia	35.48	58.06	6.45	100.00	31
Quebec	29.73	64.86	5.41	100.00	37
<b>TOTAL</b>	<b>42.04</b>	<b>52.85</b>	<b>5.11</b>	<b>100.00</b>	<b>333</b>

<u>CROWN</u>	1	2	3	TOTAL	N
British Columbia	46.05	48.68	5.26	100.00	76
Alberta	50.94	43.40	5.66	100.00	53
Ontario	50.00	45.08	4.92	100.00	122
New Brunswick	50.00	40.00	10.00	100.00	10
Nova Scotia	57.89	42.11	.00	100.00	19
Quebec	36.11	56.94	6.94	100.00	72
<b>TOTAL</b>	<b>46.88</b>	<b>47.73</b>	<b>5.40</b>	<b>100.00</b>	<b>352</b>

TABLE 14

Views on Whether There Should Be Guidelines

For Non-Carceral Dispositions

11. Should there be guidelines for non-carceral dispositions?  
 Devrait-on établir des lignes directrices pour les peines non-carcérales  
 (amendes, etc.)?

- 1 - yes/oui
- 2 - possibly/possiblement
- 3 - no/non
- 4 - depends/dépend

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	51.90	34.18	13.92	.00	100.00	79
Alberta	48.78	34.15	17.07	.00	100.00	41
Ontario	56.06	25.00	18.18	.76	100.00	132
New Brunswick	42.86	57.14	.00	.00	100.00	7
Nova Scotia	41.94	35.48	22.58	.00	100.00	31
Quebec	52.63	28.95	18.42	.00	100.00	38
TOTAL	52.13	30.49	17.07	.30	100.00	328

CROWN	1	2	3	4	TOTAL	N
British Columbia	57.89	27.63	14.47	.00	100.00	76
Alberta	53.85	25.00	21.15	.00	100.00	52
Ontario	65.25	26.27	8.47	.00	100.00	118
New Brunswick	40.00	30.00	30.00	.00	100.00	10
Nova Scotia	52.94	17.65	23.53	5.88	100.00	17
Quebec	50.70	25.35	23.94	.00	100.00	71
TOTAL	57.56	25.87	16.28	.29	100.00	344

TABLE 15

Views on A Legislated List of Aggravating and Mitigating Factors

To Be Considered by the Judge in the Imposition of Sentence

12. Would you favour a legislated list of aggravating and mitigating factors to be considered by the judge in the imposition of the sentence?  
 Est-ce que vous supporteriez le projet d'intégrer à la loi une liste de circonstances aggravantes et atténuantes, qui devraient être prises en compte par le juge dans l'imposition de sa sentence?

- 1 - yes/oui  
 2 - possibly/possiblement  
 3 - no/non  
 4 - depends/dépend

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	12.20	24.39	63.41	.00	100.00	82
Alberta	11.90	16.67	71.43	.00	100.00	42
Ontario	15.11	23.02	61.15	.72	100.00	139
New Brunswick	.00	50.00	50.00	.00	100.00	8
Nova Scotia	19.35	29.03	51.61	.00	100.00	31
Quebec	24.32	29.73	45.95	.00	100.00	37
TOTAL	15.04	24.48	60.18	.29	100.00	339

CROWN	1	2	3	4	TOTAL	N
British Columbia	27.63	22.37	50.00	.00	100.00	76
Alberta	14.00	22.00	64.00	.00	100.00	50
Ontario	29.51	20.49	50.00	.00	100.00	122
New Brunswick	20.00	10.00	70.00	.00	100.00	10
Nova Scotia	10.53	42.11	47.37	.00	100.00	19
Quebec	46.48	26.76	26.76	.00	100.00	71
TOTAL	29.02	23.28	47.70	.00	100.00	348



TABLE 16

Perceptions of the Impact of Plea Negotiations

On the Sentencing Process

13. What impact do plea negotiations have on the sentencing process (i.e. negotiations concerning charge, plea, sentence and fact bargaining)?  
 Quel effet les négociations de plaidoyers ont-elles sur le processus de la détermination des peines (l'expression "négociations du plaidoyer" réfère ici à la fois à la négociation de(s) l'accusation(s) portée(s), du plaidoyer, de la sentence et des faits qui seront soumis au tribunal)?

- 1 - a major impact/un effet majeur
- 2 - a minor impact/un effet mineur
- 3 - no impact at all/aucun effet
- 4 - depends/dépend

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	67.07	29.27	.00	3.66	100.00	82
Alberta	64.29	26.19	4.76	4.76	100.00	42
Ontario	89.86	7.97	.00	2.17	100.00	138
New Brunswick	25.00	62.50	.00	12.50	100.00	8
Nova Scotia	51.61	48.39	.00	.00	100.00	31
Quebec	92.11	7.89	.00	.00	100.00	38
<b>TOTAL</b>	<b>76.40</b>	<b>20.35</b>	<b>.59</b>	<b>2.65</b>	<b>100.00</b>	<b>339</b>

CROWN	1	2	3	4	TOTAL	N
British Columbia	48.68	46.05	2.63	2.63	100.00	76
Alberta	51.85	48.15	.00	.00	100.00	54
Ontario	79.67	19.51	.00	.81	100.00	123
New Brunswick	.00	66.67	22.22	11.11	100.00	9
Nova Scotia	31.58	52.63	15.79	.00	100.00	19
Quebec	86.11	13.89	.00	.00	100.00	72
<b>TOTAL</b>	<b>65.44</b>	<b>31.44</b>	<b>1.98</b>	<b>1.13</b>	<b>100.00</b>	<b>353</b>

TABLE 17

Stated Frequency of Participation

In Plea Negotiations

14. How often do you participate in such negotiations?  
 A quelle fréquence participez-vous à ces négociations?

- 1 - frequently/souvent
- 2 - sometimes/parfois
- 3 - rarely/rarement
- 4 - never/jamais

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	73.49	22.89	3.61	.00	100.00	83
Alberta	68.29	26.83	4.88	.00	100.00	41
Ontario	87.05	12.23	.72	.00	100.00	139
New Brunswick	12.50	75.00	12.50	.00	100.00	8
Nova Scotia	64.52	25.81	9.68	.00	100.00	31
Quebec	84.62	15.38	.00	.00	100.00	39
TOTAL	77.42	19.65	2.93	.00	100.00	341

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	45.45	37.66	14.29	2.60	100.00	77
Alberta	53.70	38.89	7.41	.00	100.00	54
Ontario	65.85	27.64	6.50	.00	100.00	123
New Brunswick	.00	20.00	60.00	20.00	100.00	10
Nova Scotia	21.05	52.63	15.79	10.53	100.00	19
Quebec	72.22	23.61	4.17	.00	100.00	72
TOTAL	56.62	31.83	9.86	1.69	100.00	355

TABLE 18

## Stated Frequency of Participation

## In Charge Negotiations

15. How often do you participate in such negotiations where the exact charge is being discussed?

À quelle fréquence participez-vous à des négociations dont l'objet porte sur la nature exacte de(s) l'accusation(s) qui sera (seront) portées?

1 - frequently/souvent

2 - sometimes/parfois

3 - rarely/rarement

4 - never/jamais

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	59.04	28.92	10.84	1.20	100.00	83
Alberta	61.90	33.33	2.38	2.38	100.00	42
Ontario	73.19	23.91	2.17	.72	100.00	138
New Brunswick	12.50	75.00	12.50	.00	100.00	8
Nova Scotia	45.16	45.16	9.68	.00	100.00	31
Quebec	30.77	33.33	20.51	15.38	100.00	39
TOTAL	59.53	30.50	7.33	2.64	100.00	341

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	32.89	50.00	13.16	3.95	100.00	76
Alberta	49.06	45.28	3.77	1.89	100.00	53
Ontario	59.35	32.52	6.50	1.63	100.00	123
New Brunswick	.00	10.00	50.00	40.00	100.00	10
Nova Scotia	10.53	57.89	21.05	10.53	100.00	19
Quebec	6.94	20.83	36.11	36.11	100.00	72
TOTAL	37.11	36.54	15.58	10.76	100.00	353

TABLE 19

Stated Frequency of Participation in Negotiations  
Regarding Submissions as to Sentence

16. How often do you participate in such negotiations where the submissions as to sentence are being discussed?  
À quelle fréquence participez-vous à des négociations dont l'objet porte sur la peine qui sera imposée par le juge?

- 1 - frequently/souvent
- 2 - sometimes/parfois
- 3 - rarely/rarement
- 4 - never/jamais

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	62.65	30.12	7.23	.00	100.00	83
Alberta	52.38	35.71	11.90	.00	100.00	42
Ontario	83.45	15.83	.72	.00	100.00	139
New Brunswick	12.50	62.50	25.00	.00	100.00	8
Nova Scotia	48.39	45.16	6.45	.00	100.00	31
Quebec	82.05	10.26	5.13	2.56	100.00	39
TOTAL	69.59	24.85	5.26	.29	100.00	342

CROWN	1	2	3	4	TOTAL	N
British Columbia	38.96	33.77	24.68	2.60	100.00	77
Alberta	38.89	53.70	5.56	1.85	100.00	54
Ontario	72.36	23.58	4.07	.00	100.00	123
New Brunswick	.00	30.00	40.00	30.00	100.00	10
Nova Scotia	26.32	52.63	10.53	10.53	100.00	19
Quebec	73.61	19.44	5.56	1.39	100.00	72
TOTAL	55.77	31.27	10.42	2.54	100.00	355

TABLE 20

## Stated Frequency of Participation in Negotiations

Over the Facts to be Disclosed to the Court

17. How often do you participate in such negotiations where the facts to be disclosed to the court are being discussed?  
 À quelle fréquence participez-vous à des négociations dont l'objet porte sur les faits qui seront dévoilés devant le tribunal?

- 1 - frequently/souvent  
 2 - sometimes/parfois  
 3 - rarely/rarement  
 4 - never/jamais

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	25.30	48.19	25.30	1.20	100.00	83
Alberta	42.86	35.71	21.43	.00	100.00	42
Ontario	45.32	41.73	12.23	.72	100.00	139
New Brunswick	25.00	37.50	12.50	25.00	100.00	8
Nova Scotia	19.35	38.71	35.48	6.45	100.00	31
Quebec	15.38	33.33	48.72	2.56	100.00	39
TOTAL	33.92	41.23	22.81	2.05	100.00	342

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	10.39	37.66	40.26	11.69	100.00	77
Alberta	25.00	38.46	23.08	13.46	100.00	52
Ontario	26.83	29.27	30.08	13.82	100.00	123
New Brunswick	10.00	.00	50.00	40.00	100.00	10
Nova Scotia	10.53	26.32	36.84	26.32	100.00	19
Quebec	8.33	11.11	30.56	50.00	100.00	72
TOTAL	17.85	27.76	32.29	22.10	100.00	353

TABLE 21

Attitudes Toward Plea Negotiations Between  
Defense and Crown Counsel

18(i). What is your attitude toward such negotiations between defense and Crown counsel?

Quelle est votre attitude par rapport aux négociations entre la Couronne et la défense?

1 - strongly approve/fortement d'accord

2 - approve/d'accord

3 - disapprove/en désaccord

4 - strongly disapprove/fortement en désaccord

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	60.24	38.55	.00	1.20	100.00	83
Alberta	59.52	35.71	2.38	2.38	100.00	42
Ontario	72.66	26.62	.72	.00	100.00	139
New Brunswick	50.00	50.00	.00	.00	100.00	8
Nova Scotia	58.06	41.94	.00	.00	100.00	31
Quebec	79.49	20.51	.00	.00	100.00	39
<b>TOTAL</b>	<b>66.96</b>	<b>31.87</b>	<b>.58</b>	<b>.58</b>	<b>100.00</b>	<b>342</b>

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	31.17	64.94	3.90	.00	100.00	77
Alberta	45.28	50.94	3.77	.00	100.00	53
Ontario	33.61	54.10	10.66	1.64	100.00	122
New Brunswick	.00	60.00	20.00	20.00	100.00	10
Nova Scotia	26.32	52.63	21.05	.00	100.00	19
Quebec	40.84	49.30	7.04	2.82	100.00	71
<b>TOTAL</b>	<b>34.94</b>	<b>55.11</b>	<b>8.24</b>	<b>1.70</b>	<b>100.00</b>	<b>352</b>



TABLE 22

Attitudes Toward Plea Negotiations Where Judges Give An Advance Indication  
Of The Sentence They Are Likely To Give

18(ii). What is your attitude toward such negotiations where judges give an advance indication of the sentence they are likely to give?  
Quelle est votre attitude par rapport aux négociations où le juge donne une indication sur la sentence qu'il est susceptible d'imposer?

- 1 - strongly approve/fortement d'accord  
2 - approve/d'accord  
3 - disapprove/en désaccord  
4 - strongly disapprove/fortement en désaccord

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	24.68	46.75	15.58	12.99	100.00	77
Alberta	17.07	36.59	24.39	21.95	100.00	41
Ontario	45.65	44.93	5.80	3.62	100.00	138
New Brunswick	14.29	57.14	28.57	.00	100.00	7
Nova Scotia	20.00	50.00	10.00	20.00	100.00	30
Quebec	38.46	43.59	17.95	.00	100.00	39
TOTAL	33.43	44.88	12.65	9.04	100.00	332

CROWN	1	2	3	4	TOTAL	N
British Columbia	2.78	25.00	45.83	26.39	100.00	72
Alberta	3.70	11.11	46.30	38.89	100.00	54
Ontario	10.83	31.67	36.67	20.83	100.00	120
New Brunswick	.00	30.00	30.00	40.00	100.00	10
Nova Scotia	5.26	15.79	57.89	21.05	100.00	19
Quebec	11.27	40.85	26.76	21.13	100.00	71
TOTAL	7.51	28.03	39.01	25.43	100.00	346

TABLE 25

Attitudes Toward Plea Negotiations Where Judges  
Participate in the Negotiations

18(iii). What is your attitude toward such negotiations where judges participate in the negotiations?  
Quelle est votre attitude par rapport aux négociations où le juge participe activement?

- 1 - strongly approve/fortement d'accord  
2 - approve/d'accord  
3 - disapprove/en désaccord  
4 - strongly disapprove/fortement en désaccord

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	5.19	24.68	38.96	31.17	100.00	77
Alberta	7.50	5.00	35.00	52.50	100.00	40
Ontario	28.99	38.41	23.91	8.70	100.00	138
New Brunswick	.00	12.50	87.50	.00	100.00	8
Nova Scotia	6.67	30.00	30.00	33.33	100.00	30
Quebec	30.77	28.21	28.21	12.82	100.00	39
TOTAL	18.37	28.61	31.33	21.69	100.00	332

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	.00	9.21	27.63	63.16	100.00	76
Alberta	.00	7.41	23.93	66.67	100.00	54
Ontario	7.38	19.67	30.33	42.62	100.00	122
New Brunswick	.00	.00	20.00	80.00	100.00	10
Nova Scotia	.00	5.26	31.58	63.16	100.00	19
Quebec	5.56	23.61	29.17	41.67	100.00	72
TOTAL	3.68	15.01	28.61	52.69	100.00	353

TABLE 24

Perceptions of Increased Likelihood of Plea Negotiations

For Offences With Mandatory Minimum Sentences

19. Are discussions involving plea more likely to occur for offences for which there is a mandatory minimum penalty?  
 La négociation du plaidoyer est-elle plus probable pour des infractions impliquant une peine minimale stipulée par la loi?

1 - yes/oui

2 - no/non

<u>DEFENSE</u>	1	2	TOTAL	N
British Columbia	47.44	52.56	100.00	78
Alberta	24.39	75.61	100.00	41
Ontario	37.59	62.41	100.00	133
New Brunswick	50.00	50.00	100.00	8
Nova Scotia	23.33	76.67	100.00	30
Quebec	31.58	68.42	100.00	38
TOTAL	36.59	63.41	100.00	328

<u>CROWN</u>	1	2	TOTAL	N
British Columbia	42.67	57.33	100.00	75
Alberta	18.52	81.48	100.00	54
Ontario	30.17	69.83	100.00	116
New Brunswick	11.11	88.89	100.00	9
Nova Scotia	11.11	88.89	100.00	18
Quebec	26.76	73.24	100.00	71
TOTAL	28.86	71.14	100.00	343

TABLE 25

Perceptions of Whether Mandatory Minimum Sentences Cause Crown and Defense Counsel to Enter Into Agreements They Would Otherwise Avoid

20. Do mandatory minimum penalties cause Crown and defense counsel to enter into agreements that they would otherwise avoid?  
L'existence de peines minimales contrainte-elle la Couronne et la défense à conclure des ententes qui ne seraient pas conclues si ce n'était du fait qu'il existe dans le cas échéant une peine minimale?

- 1 - yes, fairly often/oui, assez souvent  
2 - yes, occasionally/oui, à l'occasion  
3 - only very rarely/rarement  
4 - never/jamais

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	28.21	60.26	11.54	.00	100.00	78
Alberta	7.14	66.67	23.81	2.38	100.00	42
Ontario	25.76	50.76	19.70	3.79	100.00	132
New Brunswick	.00	33.33	50.00	16.67	100.00	6
Nova Scotia	3.85	42.31	38.46	15.38	100.00	26
Quebec	41.03	43.59	7.69	7.69	100.00	39
TOTAL	23.53	53.25	18.89	4.33	100.00	323

CROWN	1	2	3	4	TOTAL	N
British Columbia	6.85	39.73	47.95	5.48	100.00	76
Alberta	1.92	30.77	44.23	23.08	100.00	54
Ontario	2.54	24.58	52.54	20.34	100.00	116
New Brunswick	.00	.00	50.00	50.00	100.00	9
Nova Scotia	.00	16.67	44.44	38.89	100.00	18
Quebec	11.11	48.61	30.56	9.72	100.00	71
TOTAL	4.96	32.65	45.19	17.20	100.00	344

TABLE 26

Views on Whether Provincial Policy Prohibits

Plea Negotiations for Some Offences

21. Are there certain offences which as a matter of policy in your province are never the subject of plea negotiations?  
 Se trouve-t-il des infractions pour lesquelles, dans la province où vous pratiquez, de politiques judiciaires interdisent la négociation du plaidoyer (en son sens large)?

1 - yes/oui

2 - no/non

DEFENSE	1	2	TOTAL	N
British Columbia	28.00	72.00	100.00	75
Alberta	15.38	84.62	100.00	39
Ontario	22.22	77.78	100.00	126
New Brunswick	.00	100.00	100.00	7
Nova Scotia	48.28	51.72	100.00	29
Quebec	12.82	87.18	100.00	39
TOTAL	23.50	76.50	100.00	315

CROWN	1	2	TOTAL	N
British Columbia	29.58	70.42	100.00	71
Alberta	22.64	77.36	100.00	53
Ontario	34.45	65.55	100.00	119
New Brunswick	70.00	30.00	100.00	10
Nova Scotia	29.41	70.59	100.00	17
Quebec	7.04	92.96	100.00	71
TOTAL	26.69	73.31	100.00	341

TABLE 27

Views on Whether There Should Be a Sentence Discount

For a Plea of Guilty

22. Should there be a sentence discount for a plea of guilty?  
 Devrait-il exister un réduction de sentence pour un plaidoyer de culpabilité?

- 1 - yes, for all offences/oui, pour toutes les infractions
- 2 - yes, for some offences/oui, mais seulement pour certaines infractions
- 3 - no/non
- 4 - depends/dépend

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	20.48	49.40	30.12	.00	100.00	83
Alberta	36.59	36.59	26.83	.00	100.00	41
Ontario	44.12	36.76	18.38	.74	100.00	136
New Brunswick	57.14	42.86	.00	.00	100.00	7
Nova Scotia	23.33	56.67	20.00	.00	100.00	30
Quebec	28.21	43.59	28.21	.00	100.00	39
<b>TOTAL</b>	<b>33.93</b>	<b>42.56</b>	<b>23.21</b>	<b>.30</b>	<b>100.00</b>	<b>336</b>

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	9.21	72.37	18.42	.00	100.00	76
Alberta	18.52	66.67	14.81	.00	100.00	54
Ontario	20.49	68.85	10.66	.00	100.00	122
New Brunswick	30.00	50.00	20.00	.00	100.00	10
Nova Scotia	.00	70.59	29.41	.00	100.00	17
Quebec	22.86	37.14	40.00	.00	100.00	70
<b>TOTAL</b>	<b>17.48</b>	<b>62.46</b>	<b>20.06</b>	<b>.00</b>	<b>100.00</b>	<b>349</b>



TABLE 28

Perceptions of Who Initiates

Most Plea Negotiations

23. In your experience, who initiates most plea negotiations?  
 Selon votre propre expérience, quelle est la partie qui engage initialement les négociations de plaidoyer?

- 1 - Crown counsel/le procureur de la Couronne
- 2 - defense counsel/le procureur de la défense
- 3 - judge/le juge
- 4 - Crown and defense counsel/la Couronne et la défense
- 5 - defense counsel and the police/la défense et la police

<u>DEFENSE</u>	1	2	3	4	5	TOTAL	N
British Columbia	7.22	83.13	.00	9.64	.00	100.00	81
Alberta	9.76	85.37	.00	4.88	.00	100.00	41
Ontario	8.82	75.74	.00	13.24	2.21	100.00	136
New Brunswick	.00	75.00	.00	25.00	.00	100.00	8
Nova Scotia	3.23	80.65	3.23	9.67	3.23	100.00	31
Quebec	2.56	82.05	.00	15.38	.00	100.00	39
<b>TOTAL</b>	<b>7.10</b>	<b>79.88</b>	<b>.30</b>	<b>11.54</b>	<b>1.18</b>	<b>100.00</b>	<b>338</b>

<u>CROWN</u>	1	2	3	4	5	TOTAL	N
British Columbia	3.90	83.12	.00	12.99	.00	100.00	77
Alberta	22.22	70.37	.00	7.41	.00	100.00	54
Ontario	3.25	91.87	.00	4.88	.00	100.00	123
New Brunswick	.00	90.00	.00	10.00	.00	100.00	10
Nova Scotia	.00	89.47	.00	5.26	5.26	100.00	19
Quebec	6.94	77.78	1.39	4.17	9.72	100.00	72
<b>TOTAL</b>	<b>6.76</b>	<b>83.66</b>	<b>.28</b>	<b>7.04</b>	<b>2.25</b>	<b>100.00</b>	<b>355</b>

TABLE 29

Perceptions of the Role of the Judge

In Plea Negotiations

24. In your experience, how active a role does the judge play in plea negotiations?  
Selon votre propre expérience, à quel point le juge assume-t-il un rôle actif dans la négociation du plaider?

- 1 - the judge is never directly involved/le juge n'est jamais directement impliqué
- 2 - the judge is occasionally involved either in Chambers or in court/le juge est parfois impliqué en Chambre ou dans la salle d'audience
- 3 - the judge is frequently involved in Chambers/le juge est fréquemment impliqué en Chambre
- 4 - the judge is frequently involved in court/le juge est fréquemment impliqué dans la salle d'audience
- 5 - the judge is frequently involved in both court and in Chambers/le juge est fréquemment impliqué à la fois en Chambre et dans la salle d'audience
- 6 - judges of certain courts never get involved in plea negotiations/les juges de certains tribunaux ne s'impliquent jamais dans les négociations de plaider

DEFENSE	1	2	3	4	5	6	TOTAL	N
British Columbia	75.61	19.51	.00	.00	.00	4.88	100.00	82
Alberta	63.16	36.84	.00	.00	.00	.00	100.00	38
Ontario	16.67	62.50	16.67	.83	2.50	.83	100.00	120
New Brunswick	87.50	12.50	.00	.00	.00	.00	100.00	8
Nova Scotia	61.29	35.48	3.23	.00	.00	.00	100.00	31
Quebec	34.21	55.26	7.89	.00	2.63	.00	100.00	38
<b>TOTAL</b>	<b>45.74</b>	<b>43.53</b>	<b>7.57</b>	<b>.32</b>	<b>1.26</b>	<b>.158</b>	<b>100.00</b>	<b>317</b>

CROWN	1	2	3	4	5	6	TOTAL	N
British Columbia	90.41	6.85	.00	.00	.00	2.74	100.00	73
Alberta	78.85	21.15	.00	.00	.00	.00	100.00	34
Ontario	22.86	52.38	16.19	.00	3.81	4.76	100.00	105
New Brunswick	87.50	.00	.00	.00	.00	12.50	100.00	8
Nova Scotia	83.33	5.56	.00	.00	.00	11.11	100.00	18
Quebec	29.17	62.50	4.17	1.39	1.39	1.39	100.00	70
<b>TOTAL</b>	<b>53.03</b>	<b>35.67</b>	<b>4.10</b>	<b>.30</b>	<b>1.52</b>	<b>3.35</b>	<b>100.00</b>	<b>328</b>

TABLE 30

Perceptions of the Proportion of Cases Where An Offender  
Faces Multiple Charges Relating to a Single Transaction

25. In what proportion of the cases you handle does an offender face multiple charges relating to a single transaction?  
Parmi les causes dans lesquelles vous êtes impliqué(e), quelle est la proportion où un contrevenant fait l'objet d'accusations multiples pour un même événement criminel?

- 1 - 76-100%  
2 - 51-75%  
3 - 26-50%  
4 - 0-25%

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	26.51	44.58	22.89	6.02	100.00	83
Alberta	40.48	47.62	11.90	.00	100.00	42
Ontario	43.80	38.69	14.60	2.92	100.00	137
New Brunswick	.00	12.50	50.00	37.50	100.00	8
Nova Scotia	32.26	16.13	38.71	12.90	100.00	31
Quebec	28.21	51.28	17.95	2.56	100.00	39
TOTAL	35.29	40.00	19.71	5.00	100.00	340

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	12.00	46.67	26.67	14.67	100.00	75
Alberta	12.96	44.44	20.37	22.22	100.00	54
Ontario	12.40	34.71	38.84	14.05	100.00	121
New Brunswick	.00	.00	10.00	90.00	100.00	10
Nova Scotia	5.26	26.32	52.63	15.79	100.00	19
Quebec	15.49	32.39	30.99	21.13	100.00	71
TOTAL	12.29	36.86	31.71	19.14	100.00	350

TABLE 31

Perceptions of the Frequency With Which Additional or More Serious  
Charges Are Laid In Order to Gain a Stronger Position  
In Plea Negotiations

26. How often do Crown counsel and/or police lay more (or more serious) charges than they might expect to result in conviction, in order to gain a stronger position in plea negotiations?  
Combien de fois le Procureur de la Couronne et/ou la police portent-ils plus d'accusations (ou des accusation plus graves) que ce qu'ils sont en droit d'espérer prouver, pour s'assurer une position plus forte dans la négociation de plaidoyer?

- 1 - in all or most cases/dans tous les cas ou la plupart des cas
- 2 - in many cases/dans plusieurs cas
- 3 - in a few cases/dans quelques cas
- 4 - never or almost never/jamais ou presque jamais

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	16.05	50.62	29.63	3.70	100.00	81
Alberta	45.24	52.38	2.38	.00	100.00	42
Ontario	32.37	55.40	12.23	.00	100.00	139
New Brunswick	.00	37.50	62.50	.00	100.00	8
Nova Scotia	16.13	45.16	35.48	3.23	100.00	31
Quebec	26.32	50.00	23.68	.00	100.00	38
<b>TOTAL</b>	<b>27.14</b>	<b>51.92</b>	<b>19.76</b>	<b>1.18</b>	<b>100.00</b>	<b>339</b>

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	1.30	7.79	49.35	41.56	100.00	77
Alberta	1.85	16.67	51.85	29.63	100.00	54
Ontario	.83	18.18	50.41	30.58	100.00	121
New Brunswick	.00	.00	20.00	80.00	100.00	10
Nova Scotia	5.26	15.79	47.37	31.58	100.00	19
Quebec	2.78	11.11	38.89	47.22	100.00	72
<b>TOTAL</b>	<b>1.70</b>	<b>13.60</b>	<b>47.03</b>	<b>37.68</b>	<b>100.00</b>	<b>353</b>

TABLE 32

## Perceptions of the Role of the Police

## In Plea Negotiations

27. In your experience, how active a role do the police play in negotiations with the accused or his/her counsel?

Selon votre expérience, la police joue-t-elle un rôle actif dans la négociation du plaidoyer avec l'accusé et/ou son avocat(e), par ex. dans la détermination des accusations?

- 1 - very active role/un rôle très actif  
 2 - active role/un rôle actif  
 3 - insignificant role/un rôle négligeable  
 4 - no role/aucun rôle  
 5 - somewhat active/assez actif

<u>DEFENSE</u>	1	2	3	4	5	TOTAL	N
British Columbia	6.10	57.32	30.49	3.66	2.44	100.00	82
Alberta	15.00	57.50	22.50	5.00	.00	100.00	40
Ontario	21.01	63.04	10.14	2.17	3.62	100.00	138
New Brunswick	.00	25.00	62.50	12.50	.00	100.00	8
Nova Scotia	19.35	61.29	16.13	3.23	.00	100.00	31
Quebec	18.92	62.16	18.92	.00	.00	100.00	37
<b>TOTAL</b>	<b>15.77</b>	<b>59.82</b>	<b>19.35</b>	<b>2.98</b>	<b>2.08</b>	<b>100.00</b>	<b>336</b>

<u>CROWN</u>	1	2	3	4	5	TOTAL	N
British Columbia	.00	12.99	72.73	12.99	1.30	100.00	77
Alberta	.00	22.22	61.11	12.96	3.70	100.00	54
Ontario	2.46	39.34	45.90	7.38	4.92	100.00	122
New Brunswick	.00	10.00	30.00	60.00	.00	100.00	10
Nova Scotia	5.26	31.58	52.63	10.53	.00	100.00	19
Quebec	12.50	37.50	40.28	9.72	.00	100.00	72
<b>TOTAL</b>	<b>3.67</b>	<b>29.38</b>	<b>52.82</b>	<b>11.58</b>	<b>2.54</b>	<b>100.00</b>	<b>354</b>

TABLE 33

Perceptions of the Role of the Accused

In Plea Negotiations

28. In your experience, how active a role does the accused person himself/herself play in the negotiation process?  
 Selon votre expérience, l'accusé joue-t-il lui-même un rôle actif dans le processus de la négociation du plaidoyer (entendu en son sens large)?

- 1 - very active role/un rôle très actif
- 2 - active role/un rôle actif
- 3 - insignificant role/un rôle négligeable
- 4 - no role/aucun rôle

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	6.02	31.33	53.01	9.64	100.00	83
Alberta	9.52	28.57	50.00	11.90	100.00	42
Ontario	2.19	24.09	55.47	18.25	100.00	137
New Brunswick	.00	25.00	37.50	37.50	100.00	8
Nova Scotia	6.45	22.58	54.84	16.13	100.00	31
Quebec	.00	28.95	55.26	15.79	100.00	38
<b>TOTAL</b>	<b>4.13</b>	<b>26.84</b>	<b>53.69</b>	<b>15.34</b>	<b>100.00</b>	<b>339</b>

CROWN	1	2	3	4	TOTAL	N
British Columbia	2.82	25.35	53.52	18.31	100.00	71
Alberta	.00	28.85	46.15	25.00	100.00	52
Ontario	1.69	24.58	44.07	29.66	100.00	118
New Brunswick	.00	.00	50.00	50.00	100.00	8
Nova Scotia	.00	21.05	47.37	31.58	100.00	19
Quebec	2.78	27.78	50.00	19.44	100.00	72
<b>TOTAL</b>	<b>1.76</b>	<b>25.29</b>	<b>47.94</b>	<b>25.00</b>	<b>100.00</b>	<b>340</b>



TABLE 34

## Views on Legislative Control of Plea Negotiations

29. Do You favour legislative control of plea negotiations?  
 Approuvez-vous l'exercice d'un contrôle législatif sur la  
 négociation du plaidoyer (entendu en son sens large)?

1 - yes/oui  
 2 - no/non

<u>DEFENSE</u>	1	2	TOTAL	N
British Columbia	4.82	95.18	100.00	83
Alberta	4.88	95.12	100.00	41
Ontario	5.04	94.96	100.00	139
New Brunswick	.00	100.00	100.00	8
Nova Scotia	10.00	90.00	100.00	30
Quebec	18.92	81.08	100.00	37
TOTAL	6.80	93.20	100.00	338

<u>CROWN</u>	1	2	TOTAL	N
British Columbia	2.60	97.40	100.00	77
Alberta	5.66	94.34	100.00	53
Ontario	17.36	82.64	100.00	121
New Brunswick	11.11	88.89	100.00	9
Nova Scotia	21.05	78.95	100.00	19
Quebec	29.58	70.42	100.00	71
TOTAL	14.86	85.14	100.00	350

TABLE 35

Views on Legislative Prohibition of Plea Negotiations

50. Do you favour legislative prohibition of plea negotiations?  
 Approuvez-vous l'interdiction légale de la négociation du  
 plaidoyer?

- 1 - yes/oui
- 2 - no/non

<u>DEFENSE</u>	1	2	TOTAL	N
British Columbia	1.20	98.80	100.00	83
Alberta	.00	100.00	100.00	42
Ontario	1.44	98.56	100.00	139
New Brunswick	.00	100.00	100.00	8
Nova Scotia	.00	100.00	100.00	31
Quebec	2.63	97.37	100.00	38
<b>TOTAL</b>	<b>1.17</b>	<b>98.83</b>	<b>100.00</b>	<b>341</b>

<u>CROWN</u>	1	2	TOTAL	N
British Columbia	2.60	97.40	100.00	77
Alberta	3.70	96.30	100.00	54
Ontario	7.44	92.56	100.00	121
New Brunswick	10.00	90.00	100.00	10
Nova Scotia	15.79	84.21	100.00	19
Quebec	11.11	88.89	100.00	72
<b>TOTAL</b>	<b>7.08</b>	<b>92.92</b>	<b>100.00</b>	<b>353</b>

TABLE 36

## Perceptions of Judges' Attitudes Toward Submissions From

## The Defense as to the Type of Sentence To Impose

31. Do the judges that you appear before favour submissions from defense counsel as to the type of sentence to impose?  
 Les juges devant lesquels vous plaidez accueillent-ils avec faveur les soumissions de la défense sur le type de sentence qu'il convient d'imposer (par ex. amendes ou probation vs. sentence d'incarcération)?

- 1 - always/toujours  
 2 - sometimes/quelquefois  
 3 - never/jamais

<u>DEFENSE</u>	1	2	3	TOTAL	N
British Columbia	46.99	51.81	1.20	100.00	83
Alberta	19.51	80.49	.00	100.00	41
Ontario	50.36	48.18	1.46	100.00	137
New Brunswick	37.50	50.00	12.50	100.00	8
Nova Scotia	41.94	58.06	.00	100.00	31
Quebec	18.92	81.08	.00	100.00	37
<b>TOTAL</b>	<b>41.25</b>	<b>57.57</b>	<b>1.19</b>	<b>100.00</b>	<b>337</b>

<u>CROWN</u>	1	2	3	TOTAL	N
British Columbia	61.84	38.16	.00	100.00	76
Alberta	50.00	48.15	1.85	100.00	54
Ontario	44.72	53.66	1.63	100.00	123
New Brunswick	40.00	40.00	20.00	100.00	10
Nova Scotia	88.89	11.11	.00	100.00	18
Quebec	18.31	81.69	.00	100.00	71
<b>TOTAL</b>	<b>46.02</b>	<b>52.56</b>	<b>1.42</b>	<b>100.00</b>	<b>352</b>

TABLE 37

Perceptions of Judges' Attitudes Toward Submissions From

Crown Counsel as to the Type of Sentence to Impose

32. Do the judges that you appear before favour submission from Crown counsel as to the type of sentence to impose?  
 Les juges devant lesquels vous plaidez accueillent-il avec faveur les soumissions de la Couronne sur le type de sentence qu'il convient d'imposer (par ex. amendes ou probation vs. sentence d'incarcération)?

- 1 - always/toujours
- 2 - sometimes/quelquefois
- 3 - never/jamais

<u>DEFENSE</u>	1	2	3	TOTAL	N
British Columbia	33.73	65.06	1.20	100.00	83
Alberta	30.95	69.05	.00	100.00	42
Ontario	50.74	49.26	.00	100.00	136
New Brunswick	12.50	87.50	.00	100.00	8
Nova Scotia	51.61	48.39	.00	100.00	31
Quebec	27.03	72.97	.00	100.00	37
TOTAL	40.65	59.05	.30	100.00	337

<u>CROWN</u>	1	2	3	TOTAL	N
British Columbia	46.05	53.95	.00	100.00	76
Alberta	32.08	66.04	1.89	100.00	53
Ontario	39.84	57.72	2.44	100.00	123
New Brunswick	40.00	60.00	.00	100.00	10
Nova Scotia	88.89	11.11	.00	100.00	18
Quebec	14.08	85.92	.00	100.00	71
TOTAL	37.32	61.54	1.14	100.00	351

TABLE 38

Perceptions of Judges' Attitudes Toward Submissions From  
The Defense as to the Quantum of Sentence to Impose

33. Do the judges that you appear before favour submissions from defense counsel as to the quantum of sentence to impose?  
Les juges devant lesquels vous plaidez accueillent-ils avec faveur les sousmissions de la défense sur la quantité de la peine qu'il convient d'imposer (par ex. le nombre de mois ou d'années pour une peine d'incarcération ou le montant des amendes)?

- 1 - always/toujours  
2 - sometimes/quelquefois  
3 - never/jamais  
4 - usually/d'habitude

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	28.92	66.27	4.82	.00	100.00	83
Alberta	12.20	85.37	2.44	.00	100.00	41
Ontario	35.29	64.71	.00	.00	100.00	136
New Brunswick	.00	62.50	37.50	.00	100.00	8
Nova Scotia	22.58	74.19	3.23	.00	100.00	31
Quebec	16.22	83.78	.00	.00	100.00	37
<b>TOTAL</b>	<b>26.79</b>	<b>70.54</b>	<b>2.68</b>	<b>.00</b>	<b>100.00</b>	<b>336</b>

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	28.38	71.62	.00	.00	100.00	74
Alberta	40.74	57.41	1.85	.00	100.00	54
Ontario	34.15	65.04	.81	.00	100.00	123
New Brunswick	20.00	60.00	10.00	10.00	100.00	10
Nova Scotia	50.00	44.44	5.56	.00	100.00	18
Quebec	14.08	85.92	.00	.00	100.00	71
<b>TOTAL</b>	<b>30.29</b>	<b>68.29</b>	<b>1.14</b>	<b>.29</b>	<b>100.00</b>	<b>350</b>

TABLE 39

## Perceptions of Judges' Attitudes Toward Submission From

Crown Counsel as to the Quantum of Sentence to Impose

34. Do the judges that you appear before favour submissions from Crown counsel as to the quantum of sentence to impose?  
 Les juges devant lesquels vous plaidez accueillent-ils avec faveur les soumissions de la Couronne sur la quantité de la peine qu'il convient d'imposer (par ex. le nombre de mois ou d'années pour une peine d'incarcération ou le montant des amendes)?

- 1 - always/toujours  
 2 - sometimes/quelquefois  
 3 - never/jamais

<u>DEFENSE</u>	1	2	3	TOTAL	N
British Columbia	16.87	80.72	2.41	100.00	83
Alberta	30.95	66.67	2.38	100.00	42
Ontario	36.76	63.24	.00	100.00	136
New Brunswick	.00	87.50	12.50	100.00	8
Nova Scotia	26.67	60.00	13.33	100.00	30
Quebec	18.92	81.08	.00	100.00	37
TOTAL	27.38	70.24	2.38	100.00	336

<u>CROWN</u>	1	2	3	TOTAL	N
British Columbia	13.33	84.00	2.67	100.00	75
Alberta	24.53	73.58	1.89	100.00	53
Ontario	26.02	70.73	3.25	100.00	123
New Brunswick	20.00	60.00	20.00	100.00	10
Nova Scotia	44.44	44.44	11.11	100.00	18
Quebec	8.57	91.43	.00	100.00	70
TOTAL	20.34	76.50	3.15	100.00	349



TABLE 40

## Perceptions of Judges' Attitudes Toward Joint Submissions

35. In cases where there have been plea negotiations, does the judge usually accept a joint submission if one is made?

Lorsqu'il y a eu négociations de plaider dans une cause, est-ce que le juge accepte habituellement les recommandations faites dans une soumission conjointe, si une telle soumission est présentée?

1 - yes, always/oui, toujours

2 - yes, in most cases/oui, dans la plupart des cas

3 - sometimes/parfois

4 - rarely/rarement

5 - never/jamais

DEFENSE	1	2	3	4	5	TOTAL	N
British Columbia	3.70	66.67	22.22	6.17	1.23	100.00	81
Alberta	5.00	82.50	10.00	2.50	.00	100.00	40
Ontario	4.38	90.51	5.11	.00	.00	100.00	137
New Brunswick	12.50	62.50	12.50	12.50	.00	100.00	8
Nova Scotia	6.45	80.65	12.90	.00	.00	100.00	31
Quebec	5.13	89.74	5.13	.00	.00	100.00	39
<b>TOTAL</b>	<b>4.76</b>	<b>82.14</b>	<b>10.71</b>	<b>2.08</b>	<b>.30</b>	<b>100.00</b>	<b>336</b>

CROWN	1	2	3	4	5	TOTAL	N
British Columbia	2.67	72.00	17.33	5.33	2.67	100.00	75
Alberta	.00	77.78	18.52	3.70	.00	100.00	54
Ontario	3.25	91.06	5.69	.00	.00	100.00	123
New Brunswick	11.11	55.56	22.22	11.11	.00	100.00	9
Nova Scotia	11.11	77.78	11.11	.00	.00	100.00	18
Quebec	6.94	93.06	.00	.00	.00	100.00	72
<b>TOTAL</b>	<b>3.99</b>	<b>83.76</b>	<b>9.69</b>	<b>1.99</b>	<b>.57</b>	<b>100.00</b>	<b>351</b>

TABLE 41

Rated Importance of Various Factors in  
Determining Sentence at Present

36. At present, how important do you think each of the following factors is in determining sentence: (1-not at all important; 2-somewhat important; 3-very important)?

Dans les circonstances actuelles, quelle est, selon vous, l'importance qui est accordée aux facteurs suivants dans la détermination de la peine: (1-pas important; 2-assez important; 3-très important)?

- A - the legislated maximum penalty for that offence/les peines maximum prévues par la loi pour une infraction
- B - Appeal Court decisions from your province/les jugements de la Cour d'Appel dans votre province
- C - Appeal Court decisions from other provinces/les jugements de la Cour d'Appel dans d'autres provinces
- D - the individual judge/les attitudes personnelles du juge
- E - Crown or defense counsel/les aptitudes de la Couronne ou de la défense
- F - the particular offence/la nature de l'infraction
- G - offender's criminal record/le dossier criminel du contrevenant
- H - other characteristics of the offender (e.g. age, sex, etc.)/autres caractéristiques de contrevenant
- I - frequency of the offence in the community/la fréquence de l'infraction dans la communauté
- J - community values with respect to the offence/les jugements de la communauté par rapport à la gravité de l'infraction

DEFENSE	A			TOTAL	N	B			TOTAL	N
	1	2	3			1	2	3		
British Columbia	28.92	59.04	12.05	100.00	83	1.20	44.58	54.22	100.00	83
Alberta	26.19	64.29	9.52	100.00	42	1.00	9.52	90.48	100.00	42
Ontario	36.30	48.15	15.56	100.00	135	1.46	40.15	58.39	100.00	137
New Brunswick	37.50	37.50	25.00	100.00	8	1.00	37.50	62.50	100.00	8
Nova Scotia	22.58	58.06	19.35	100.00	31	1.00	29.05	70.97	100.00	31
Quebec	31.45	62.86	5.71	100.00	35	25.00	55.56	19.44	100.00	36
TOTAL	31.44	55.09	13.47	100.00	334	3.56	37.98	58.46	100.00	337

CROWN				TOTAL	N				TOTAL	N
	1	2	3			1	2	3		
British Columbia	48.05	41.56	10.39	100.00	77	1.30	35.06	63.64	100.00	77
Alberta	37.74	50.94	11.32	100.00	53	1.85	11.11	87.04	100.00	54
Ontario	42.02	42.86	15.13	100.00	119	3.28	35.25	61.48	100.00	122
New Brunswick	20.00	60.00	20.00	100.00	10	1.00	30.00	70.00	100.00	10
Nova Scotia	51.58	48.42	1.00	100.00	19	1.00	21.05	78.95	100.00	19
Quebec	44.78	43.28	11.94	100.00	67	27.94	52.94	19.12	100.00	62
TOTAL	42.03	43.89	12.17	100.00	345	7.14	34.00	58.86	100.00	350

TABLE 41 (cont'd)

DEFENSE	C			TOTAL	N	D			TOTAL	N
	1	2	3			1	2	3		
British Columbia	46.99	49.40	2.61	100.00	83	1.20	9.64	89.16	100.00	83
Alberta	42.86	57.14	.00	100.00	42	.00	4.76	95.24	100.00	42
Ontario	39.35	58.96	1.49	100.00	134	1.45	8.70	89.86	100.00	134
New Brunswick	75.00	25.00	.00	100.00	8	.00	12.50	87.50	100.00	8
Nova Scotia	54.84	38.71	6.45	100.00	31	.00	29.03	70.97	100.00	31
Quebec	48.57	51.43	.00	100.00	35	2.63	26.52	71.05	100.00	38
TOTAL	43.03	52.85	2.10	100.00	333	1.18	12.33	86.47	100.00	340

CROWN	C			TOTAL	N	D			TOTAL	N
	1	2	3			1	2	3		
British Columbia	42.86	55.84	1.30	100.00	77	2.60	3.90	93.51	100.00	77
Alberta	24.07	72.22	3.70	100.00	54	.00	29.63	70.37	100.00	54
Ontario	42.98	57.02	.00	100.00	121	1.64	9.02	89.34	100.00	122
New Brunswick	.00	100.00	.00	100.00	9	.00	20.00	80.00	100.00	10
Nova Scotia	36.84	63.16	.00	100.00	19	.00	26.32	73.68	100.00	19
Quebec	56.06	37.88	6.06	100.00	66	8.70	27.54	63.77	100.00	69
TOTAL	41.04	56.94	2.02	100.00	346	2.85	13.93	81.20	100.00	351

DEFENSE	E			TOTAL	N	F			TOTAL	N
	1	2	3			1	2	3		
British Columbia	4.82	56.63	38.55	100.00	83	1.20	32.53	66.27	100.00	83
Alberta	7.14	54.76	38.10	100.00	42	.00	28.57	71.43	100.00	42
Ontario	5.19	61.48	33.33	100.00	135	2.96	40.00	57.04	100.00	135
New Brunswick	12.50	62.50	25.00	100.00	8	12.50	25.00	62.50	100.00	8
Nova Scotia	12.90	70.97	16.13	100.00	31	.00	38.71	61.29	100.00	31
Quebec	2.70	43.24	54.05	100.00	37	.00	43.24	56.76	100.00	37
TOTAL	5.95	58.33	35.71	100.00	336	1.79	56.61	61.61	100.00	336

CROWN	E			TOTAL	N	F			TOTAL	N
	1	2	3			1	2	3		
British Columbia	10.39	75.32	14.29	100.00	77	.00	32.89	67.11	100.00	76
Alberta	18.52	57.41	24.07	100.00	54	.00	37.04	62.96	100.00	54
Ontario	12.50	73.33	14.17	100.00	120	1.65	28.93	69.42	100.00	121
New Brunswick	33.33	55.56	11.11	100.00	9	10.00	30.00	60.00	100.00	10
Nova Scotia	21.05	52.63	26.32	100.00	19	.00	31.58	68.42	100.00	19
Quebec	27.94	58.82	13.24	100.00	68	1.43	40.00	58.57	100.00	70
TOTAL	17.00	66.86	16.14	100.00	347	1.14	33.43	65.43	100.00	350

TABLE 41 (cont'd)

G

DEFENSE	1	2	3	TOTAL	N
British Columbia	1.20	16.87	81.93	100.00	83
Alberta	.00	21.43	78.57	100.00	42
Ontario	.00	28.47	71.53	100.00	137
New Brunswick	.00	25.00	75.00	100.00	8
Nova Scotia	.00	19.35	80.65	100.00	31
Quebec	.00	7.69	92.31	100.00	39
TOTAL	.29	21.47	78.24	100.00	340

H

	1	2	3	TOTAL	N
	3.61	60.24	36.14	100.00	83
	7.14	73.81	19.05	100.00	42
	5.15	69.85	25.00	100.00	136
	.00	75.00	25.00	100.00	8
	3.23	61.29	35.48	100.00	31
	8.33	69.44	22.22	100.00	36
	5.06	67.26	27.68	100.00	336

CROWN

	1	2	3	TOTAL	N
British Columbia	.00	27.27	72.73	100.00	77
Alberta	.00	33.33	66.67	100.00	54
Ontario	.83	30.58	68.60	100.00	121
New Brunswick	.00	50.00	50.00	100.00	10
Nova Scotia	.00	15.79	84.21	100.00	19
Quebec	1.41	32.39	66.20	100.00	71
TOTAL	.57	30.40	69.03	100.00	352

	1	2	3	TOTAL	N
	5.19	59.74	35.06	100.00	77
	11.11	66.67	22.22	100.00	54
	4.13	63.64	32.23	100.00	121
	22.22	66.67	11.11	100.00	9
	5.26	78.95	15.79	100.00	19
	19.70	56.06	24.24	100.00	66
	8.96	62.72	28.32	100.00	346

I

DEFENSE	1	2	3	TOTAL	N
British Columbia	9.64	57.83	32.53	100.00	83
Alberta	2.38	54.76	42.86	100.00	42
Ontario	9.49	70.80	19.71	100.00	137
New Brunswick	.00	12.50	87.50	100.00	8
Nova Scotia	6.45	54.84	38.71	100.00	31
Quebec	3.71	74.29	20.00	100.00	35
TOTAL	7.74	63.10	29.17	100.00	336

J

	1	2	3	TOTAL	N
	14.46	66.27	19.28	100.00	83
	11.90	61.90	26.19	100.00	42
	19.40	61.19	19.40	100.00	134
	.00	50.00	50.00	100.00	8
	16.13	51.61	32.26	100.00	31
	25.71	51.43	22.86	100.00	35
	17.12	60.36	22.52	100.00	333

CROWN

	1	2	3	TOTAL	N
British Columbia	13.58	71.43	12.99	100.00	77
Alberta	11.11	81.48	7.41	100.00	54
Ontario	20.66	70.25	9.09	100.00	121
New Brunswick	20.00	50.00	50.00	100.00	10
Nova Scotia	5.26	63.16	31.58	100.00	19
Quebec	28.99	56.52	14.49	100.00	60
TOTAL	18.86	68.00	13.14	100.00	350

	1	2	3	TOTAL	N
	29.87	55.84	14.29	100.00	77
	24.53	69.81	5.66	100.00	53
	39.17	52.50	8.33	100.00	120
	33.33	66.67	.00	100.00	9
	15.79	84.21	.00	100.00	19
	49.25	37.51	13.43	100.00	67
	33.36	55.07	9.57	100.00	345

TABLE 42

Views on How Important Various Factors Should Be  
In Determining Sentence

37. Now we would like to ask you how important the following factors should be in determining sentence (1-not at all important; 2-somewhat important; 3-very important).  
Maintenant, si l'on vous demandait d'estimer quelle devrait être l'importance de ces mêmes facteurs dans la détermination d'une sentence, quelle serait votre évaluation (1-pas important; 2-assez important; 3-très important)?

- A - the legislated maximum penalty for that offence/les peines maximum prévues par la loi pour une infraction
- B - Appeal Court decisions from your province/les jugements de la Cour d'Appel dans votre province
- C - Appeal Court decisions from other provinces/les jugements de la Cour d'Appel dans d'autres provinces
- D - the individual judge/les attitudes personnelles du juge
- E - Crown or defense counsel/les aptitudes de la Couronne ou de la défense
- F - the particular offence/la nature de l'infraction
- G - offender's criminal record/le dossier criminel du contrevenant
- H - other characteristics of the offender (e.g. age, sex, etc.)/autres caractéristiques de contrevenant
- I - frequency of the offence in the community/la fréquence de l'infraction dans la communauté
- J - community values with respect to the offence/les jugements de la communauté par rapport à la gravité de l'infraction

DEFENSE	A			TOTAL	N	B			TOTAL	N
	1	2	3			1	2	3		
British Columbia	27.50	51.25	21.25	100.00	80	7.41	48.15	44.44	100.00	81
Alberta	34.15	53.66	12.20	100.00	41	2.38	47.62	50.00	100.00	42
Ontario	29.63	50.37	20.00	100.00	135	1.46	34.31	64.23	100.00	137
New Brunswick	42.86	14.29	42.86	100.00	7	.00	50.00	50.00	100.00	8
New Scotia	22.58	48.59	29.03	100.00	31	3.23	35.48	61.29	100.00	31
Quebec	22.22	58.33	19.44	100.00	36	11.11	66.67	22.22	100.00	36
<b>TOTAL</b>	<b>28.48</b>	<b>50.91</b>	<b>20.61</b>	<b>100.00</b>	<b>330</b>	<b>4.18</b>	<b>43.28</b>	<b>52.54</b>	<b>100.00</b>	<b>335</b>

CROWN	A			TOTAL	N	B			TOTAL	N
	1	2	3			1	2	3		
British Columbia	6.49	51.95	41.56	100.00	77	.00	14.29	85.71	100.00	77
Alberta	15.09	39.62	45.28	100.00	53	.00	5.56	94.44	100.00	54
Ontario	11.11	40.17	48.72	100.00	117	1.64	18.03	80.33	100.00	122
New Brunswick	.00	60.00	40.00	100.00	10	.00	10.00	90.00	100.00	10
New Scotia	5.56	55.56	38.89	100.00	18	.00	21.05	78.95	100.00	19
Quebec	5.00	36.23	57.97	100.00	69	7.25	42.03	50.72	100.00	69
<b>TOTAL</b>	<b>9.01</b>	<b>43.31</b>	<b>47.67</b>	<b>100.00</b>	<b>344</b>	<b>1.99</b>	<b>19.94</b>	<b>78.06</b>	<b>100.00</b>	<b>351</b>

TABLE 42 (cont'd)

DEFENSE	C			TOTAL	N	D			TOTAL	N
	1	2	3			1	2	3		
British Columbia	26.83	64.63	8.54	100.00	82	69.31	23.17	7.32	100.00	82
Alberta	12.20	60.98	26.83	100.00	41	64.67	30.95	2.38	100.00	42
Ontario	22.06	67.65	10.29	100.00	136	64.67	25.93	7.41	100.00	135
New Brunswick	25.00	75.00	.00	100.00	8	62.50	37.50	.00	100.00	8
Nova Scotia	19.35	77.42	3.23	100.00	31	74.19	16.13	9.68	100.00	31
Quebec	38.89	47.22	13.89	100.00	36	81.08	13.51	5.41	100.00	37
TOTAL	23.65	64.97	11.38	100.00	334	69.35	23.00	6.37	100.00	335

CROWN				TOTAL	N				TOTAL	N
	1	2	3			1	2	3		
British Columbia	19.48	70.15	10.39	100.00	77	67.53	29.87	2.60	100.00	77
Alberta	9.26	74.07	16.67	100.00	54	72.22	22.22	5.56	100.00	54
Ontario	17.65	72.27	10.08	100.00	119	68.64	19.49	11.86	100.00	118
New Brunswick	10.00	80.00	10.00	100.00	10	70.00	20.00	10.00	100.00	10
Nova Scotia	10.53	89.47	.00	100.00	19	57.89	31.58	10.53	100.00	19
Quebec	7.44	56.72	35.82	100.00	67	82.35	14.71	2.94	100.00	68
TOTAL	14.16	70.23	15.61	100.00	346	71.10	21.97	6.94	100.00	346

DEFENSE	E			TOTAL	N	F			TOTAL	N
	1	2	3			1	2	3		
British Columbia	54.88	34.15	10.98	100.00	82	1.22	30.49	68.29	100.00	82
Alberta	64.29	28.57	7.14	100.00	42	.00	28.57	71.43	100.00	42
Ontario	57.46	32.09	10.45	100.00	134	2.96	54.81	62.22	100.00	135
New Brunswick	25.00	37.50	37.50	100.00	8	.00	25.00	75.00	100.00	8
Nova Scotia	58.06	32.26	9.68	100.00	31	.00	41.94	58.06	100.00	31
Quebec	54.05	37.84	8.11	100.00	37	2.70	24.32	72.97	100.00	37
TOTAL	56.59	32.93	10.48	100.00	334	1.79	32.24	65.97	100.00	335

CROWN				TOTAL	N				TOTAL	N
	1	2	3			1	2	3		
British Columbia	54.55	41.56	3.90	100.00	77	1.30	18.18	80.52	100.00	77
Alberta	72.22	20.37	7.41	100.00	54	1.85	14.81	83.33	100.00	54
Ontario	64.17	26.67	9.17	100.00	120	.83	11.57	87.60	100.00	121
New Brunswick	60.00	40.00	.00	100.00	10	.00	30.00	70.00	100.00	10
Nova Scotia	52.63	31.58	15.79	100.00	19	.00	26.32	73.68	100.00	19
Quebec	62.69	31.34	5.97	100.00	67	.00	18.57	81.43	100.00	70
TOTAL	62.25	30.55	7.20	100.00	347	.83	16.24	82.91	100.00	351



TABLE 42 (cont'd)

DEFENSE	G			TOTAL	N
	1	2	3		
British Columbia	2.44	50.00	47.56	100.00	82
Alberta	4.76	54.76	40.48	100.00	42
Ontario	6.52	65.22	28.26	100.00	138
New Brunswick	.00	75.00	25.00	100.00	8
Nova Scotia	.00	54.84	45.16	100.00	31
Quebec	2.70	51.35	45.95	100.00	37
TOTAL	4.14	57.99	37.87	100.00	338

DEFENSE	H			TOTAL	N
	1	2	3		
British Columbia	4.88	42.68	52.44	100.00	82
Alberta	2.38	50.95	66.67	100.00	42
Ontario	4.41	45.59	50.00	100.00	136
New Brunswick	12.50	50.00	37.50	100.00	8
Nova Scotia	5.25	35.48	61.29	100.00	31
Quebec	7.89	44.74	47.37	100.00	38
TOTAL	4.75	42.14	53.12	100.00	337

CROWN	I			TOTAL	N
	1	2	3		
British Columbia	.00	28.57	71.43	100.00	77
Alberta	3.70	24.07	72.22	100.00	54
Ontario	.83	26.45	72.73	100.00	121
New Brunswick	.00	40.00	60.00	100.00	10
Nova Scotia	.00	36.84	63.16	100.00	19
Quebec	2.82	19.72	77.46	100.00	71
TOTAL	1.42	26.14	72.44	100.00	352

CROWN	J			TOTAL	N
	1	2	3		
British Columbia	7.79	67.53	24.68	100.00	77
Alberta	22.22	57.41	20.37	100.00	54
Ontario	7.56	63.87	28.57	100.00	119
New Brunswick	22.22	55.56	22.22	100.00	9
Nova Scotia	5.26	78.95	15.79	100.00	19
Quebec	14.93	64.18	20.90	100.00	67
TOTAL	11.59	64.35	24.06	100.00	345

DEFENSE	I			TOTAL
	1	2	3	
British Columbia	22.22	65.43	12.35	100.00
Alberta	30.95	52.38	16.67	100.00
Ontario	20.44	67.15	12.41	100.00
New Brunswick	50.00	25.00	25.00	100.00
Nova Scotia	12.90	70.97	16.13	100.00
Quebec	19.44	69.44	11.11	100.00
TOTAL	22.09	64.48	13.43	100.00

DEFENSE	J			TOTAL	N
	1	2	3		
British Columbia	37.50	53.00	7.50	100.00	80
Alberta	27.50	65.00	7.50	100.00	40
Ontario	35.07	52.99	11.94	100.00	134
New Brunswick	50.00	50.00	.00	100.00	8
Nova Scotia	32.26	58.06	9.68	100.00	31
Quebec	47.22	47.22	5.56	100.00	36
TOTAL	36.17	54.71	9.12	100.00	329

CROWN	I			TOTAL
	1	2	3	
British Columbia	3.90	57.14	38.96	100.00
Alberta	18.52	55.56	25.93	100.00
Ontario	5.74	42.62	51.64	100.00
New Brunswick	.00	30.00	70.00	100.00
Nova Scotia	.00	52.63	47.37	100.00
Quebec	10.00	35.71	54.29	100.00
TOTAL	7.67	46.59	45.74	100.00

CROWN	J			TOTAL	N
	1	2	3		
British Columbia	7.79	54.35	37.86	100.00	77
Alberta	23.08	50.00	26.92	100.00	52
Ontario	16.53	49.59	33.88	100.00	121
New Brunswick	.00	90.00	10.00	100.00	10
Nova Scotia	10.53	63.16	26.32	100.00	19
Quebec	29.41	38.24	32.35	100.00	68
TOTAL	17.29	50.43	32.28	100.00	347

TABLE 43

## Perceived Ability to Predict Sentence Where

There Has Been No Plea Negotiation

38. Without knowing the identity of the judge hearing the case, can you predict reasonably accurately the sentence that will be handed down in a particular case where there has been no plea negotiation?  
 Sans connaître l'identité du juge qui présidera le tribunal, pouvez-vous prédire (à l'intérieur de marges d'erreur raisonnables) la peine qui sera prononcée par la cour dans une cause où il n'y a pas eu de négociation du plaidoyer?

- 1 - yes, in most cases/oui, dans la plupart des cas  
 2 - yes, sometimes/oui, parfois  
 3 - rarely/rarement  
 4 - never/jamais

DEFENSE	1	2	3	4	TOTAL	N
British Columbia	27.71	48.19	21.69	2.41	100.00	83
Alberta	26.19	64.29	7.14	2.38	100.00	42
Ontario	25.36	56.52	17.39	.72	100.00	138
New Brunswick	37.50	37.50	25.00	.00	100.00	8
Nova Scotia	29.03	48.39	22.58	.00	100.00	31
Quebec	48.72	38.46	10.26	2.56	100.00	39
TOTAL	29.33	52.20	17.01	1.47	100.00	341

CROWN	1	2	3	4	TOTAL	N
British Columbia	18.18	59.74	20.78	1.30	100.00	77
Alberta	50.00	40.74	7.41	1.85	100.00	54
Ontario	20.33	53.66	24.39	1.63	100.00	123
New Brunswick	30.00	60.00	10.00	.00	100.00	10
Nova Scotia	31.58	47.37	15.79	5.26	100.00	19
Quebec	44.44	41.67	12.50	1.39	100.00	72
TOTAL	30.14	50.42	17.75	1.69	100.00	355

TABLE 44

Views on the Usefulness of Re-classifying Offences

To Reflect Sentences Actually Being Imposed

39. Would it be useful, in the sentencing process, to have a reclassification of offences with maximum penalties geared closer to the sentences that are actually being imposed?  
 Serait-il utile pour la détermination des peines de procéder à une reclassification des infractions qui leur assignerait des peines maximum correspondant de façon plus étroites aux peines qui sont effectivement attribuées?

1 - yes, it would be useful/oui, cela serait utile  
 2 - no, it would not be useful/non, cela ne serait pas utile

<u>DEFENSE</u>	1	2	TOTAL	N
British Columbia	40.74	59.26	100.00	81
Alberta	52.50	47.50	100.00	40
Ontario	62.32	37.68	100.00	138
New Brunswick	50.00	50.00	100.00	8
Nova Scotia	61.29	38.71	100.00	31
Quebec	69.44	30.56	100.00	36
<b>TOTAL</b>	<b>56.29</b>	<b>43.71</b>	<b>100.00</b>	<b>334</b>

<u>CROWN</u>	1	2	TOTAL	N
British Columbia	24.68	75.32	100.00	77
Alberta	18.52	81.48	100.00	54
Ontario	22.50	77.50	100.00	120
New Brunswick	22.22	77.78	100.00	9
Nova Scotia	21.05	78.95	100.00	19
Quebec	48.57	51.43	100.00	70
<b>TOTAL</b>	<b>27.51</b>	<b>72.49</b>	<b>100.00</b>	<b>349</b>

TABLE 45

Attitudes Toward Public Impressions of Sentencing

40. Most maximum penalties are seldom imposed. Do you think this gives a false impression of sentencing to the public?  
 La plupart des peines maximums ne sont pas souvent imposées. Croyez-vous que cela produit une fausse impression de la détermination de la peine (du sentencing) auprès du public?

1 - yes/oui  
 2 - no/non

DEFENSE	1	2	TOTAL	N
British Columbia	58.54	41.46	100.00	82
Alberta	65.00	35.00	100.00	40
Ontario	65.47	34.53	100.00	139
New Brunswick	87.50	12.50	100.00	8
Nova Scotia	61.29	38.71	100.00	31
Quebec	73.68	26.32	100.00	38
TOTAL	64.79	35.21	100.00	338

CROWN	1	2	TOTAL	N
British Columbia	88.00	12.00	100.00	75
Alberta	68.52	31.48	100.00	54
Ontario	81.97	18.03	100.00	122
New Brunswick	100.00	.00	100.00	10
Nova Scotia	78.95	21.05	100.00	19
Quebec	80.56	19.44	100.00	72
TOTAL	81.25	18.75	100.00	352

TABLE 46

Views on the Present System of Mandatory Supervision

41. Do you think that mandatory supervision, as it presently exists, should be retained?

Croyez-vous que la surveillance obligatoire (mandatory supervision) devrait être maintenue dans son état actuel?

- 1 - definitely yes/oui, absolument
- 2 - probably yes/oui, probablement
- 3 - probably no/non, probablement
- 4 - definitely no/non, absolument

<u>DEFENSE</u>	1	2	3	4	TOTAL	N
British Columbia	31.25	38.75	18.75	11.25	100.00	80
Alberta	46.15	35.90	17.95	.00	100.00	39
Ontario	22.95	47.41	18.52	11.11	100.00	135
New Brunswick	25.00	25.00	37.50	12.50	100.00	8
Nova Scotia	35.48	25.81	22.58	16.13	100.00	31
Quebec	25.00	50.00	13.89	11.11	100.00	36
<b>TOTAL</b>	<b>29.18</b>	<b>41.64</b>	<b>18.84</b>	<b>10.33</b>	<b>100.00</b>	<b>329</b>

<u>CROWN</u>	1	2	3	4	TOTAL	N
British Columbia	3.90	20.78	38.96	36.36	100.00	77
Alberta	11.11	20.37	22.22	46.30	100.00	54
Ontario	6.72	19.33	19.33	54.62	100.00	119
New Brunswick	.00	30.00	30.00	40.00	100.00	10
Nova Scotia	5.26	15.79	15.79	63.16	100.00	19
Quebec	32.31	36.92	21.54	9.23	100.00	65
<b>TOTAL</b>	<b>11.34</b>	<b>23.26</b>	<b>24.71</b>	<b>40.70</b>	<b>100.00</b>	<b>344</b>

TABLE 47

Views on Earned Remission

42. Should some form of earned remission continue to be available so that inmates who behave well in prison are released before the end of their sentence?

Devrait-on conserver une remise de peine méritée, de telle sorte que les détenus qui se sont bien conduits lors de leur incarcération seraient d'être libérés avant l'expiration de leur sentence?

- 1 - definitely yes/oui, absolument
- 2 - probably yes/oui, probablement
- 3 - probably no/non, probablement
- 4 - definitely no/non, absolument
- 5 - possibly/possiblement

DEFENSE	1	2	3	4	5	TOTAL	N
British Columbia	64.63	31.71	2.44	1.22	.00	100.00	82
Alberta	85.71	14.29	.00	.00	.00	100.00	42
Ontario	73.38	22.30	2.16	2.16	.00	100.00	139
New Brunswick	62.50	37.50	.00	.00	.00	100.00	8
Nova Scotia	54.84	38.71	3.23	3.23	.00	100.00	31
Quebec	73.68	21.05	2.63	2.63	.00	100.00	38
TOTAL	70.88	25.29	2.06	1.76	.00	100.00	340

CROWN	1	2	3	4	5	TOTAL	N
British Columbia	25.97	46.75	18.18	9.09	.00	100.00	77
Alberta	34.62	34.62	15.38	15.38	.00	100.00	52
Ontario	28.69	44.26	9.84	16.39	.82	100.00	122
New Brunswick	30.00	50.00	10.00	10.00	.00	100.00	10
Nova Scotia	21.05	47.37	.00	31.58	.00	100.00	19
Quebec	21.74	49.28	14.49	14.49	.00	100.00	69
TOTAL	27.22	44.70	12.89	14.90	.29	100.00	349

TABLE 48

Views on the Current System of Parole

43. What is your reaction to the current system of parole?  
 Quelle est votre évaluation du système actuel de libération conditionnelle?

- 1 - the current system of parole should be retained/  
 le système actuel devrait être conservé
- 2 - the current system of parole should be abolished/  
 le système actuel devrait être aboli
- 3 - the current system of parole should be changed/  
 le système actuel devrait être modifié

<u>DEFENSE</u>	1	2	3	TOTAL	N
British Columbia	45.00	7.50	47.50	100.00	80
Alberta	47.37	.00	52.63	100.00	38
Ontario	50.00	5.22	44.78	100.00	134
New Brunswick	25.00	12.50	62.50	100.00	8
Nova Scotia	20.00	16.67	63.33	100.00	30
Quebec	23.08	.00	76.92	100.00	39
TOTAL	41.95	5.78	52.28	100.00	329

<u>CROWN</u>	1	2	3	TOTAL	N
British Columbia	10.67	20.00	69.33	100.00	75
Alberta	9.62	26.92	63.46	100.00	52
Ontario	10.74	27.27	61.98	100.00	121
New Brunswick	.00	20.00	80.00	100.00	10
Nova Scotia	5.26	36.84	57.89	100.00	19
Quebec	14.29	21.43	64.29	100.00	70
TOTAL	10.66	24.78	64.55	100.00	347



TABLE 49

Views on Judicial Control Over Parole and/or Other

Early Release Decisions

45. Do you think that there should be some form of judicial control over parole and/or other early release decisions?  
 Croyez-vous qu'un contrôle judiciaire devrait être exercé sur les mesures de remise en liberté avant l'expiration de la peine (libération conditionnelle ou remise en liberté sous surveillance obligatoire)?

- 1 - yes/oui
- 2 - no/non
- 3 - possibly/possiblement

<u>DEFENSE</u>	1	2	3	TOTAL	N
British Columbia	55.56	44.44	.00	100.00	81
Alberta	72.50	27.50	.00	100.00	40
Ontario	45.52	54.48	.00	100.00	134
New Brunswick	57.14	42.86	.00	100.00	7
Nova Scotia	48.28	51.72	.00	100.00	29
Quebec	65.71	31.43	2.86	100.00	35
TOTAL	53.99	45.71	.31	100.00	326

<u>CROWN</u>	1	2	3	TOTAL	N
British Columbia	69.33	30.67	.00	100.00	75
Alberta	70.37	29.63	.00	100.00	54
Ontario	69.92	30.08	.00	100.00	123
New Brunswick	50.00	50.00	.00	100.00	10
Nova Scotia	77.78	16.67	5.56	100.00	18
Quebec	84.72	15.28	.00	100.00	72
TOTAL	72.73	26.99	.28	100.00	352

TABLE 50

Views on Limiting Judicial Control Over Early Release  
To Certain Offences

46. If there were to be some form of judicial control over early release, should it be limited to certain kinds of offences (e.g. violent offences)?  
Si un contrôle judiciaire devait s'exercer sur les mesures de remise en liberté avant l'expiration de la peine, croyez-vous qu'il devrait être limité à certaines infractions (par ex. les infractions violentes contre la personne)?

1 - yes/oui  
2 - no/non

<u>DEFENSE</u>	1	2	TOTAL	N
British Columbia	43.42	56.58	100.00	76
Alberta	40.00	60.00	100.00	35
Ontario	54.03	45.97	100.00	124
New Brunswick	57.14	42.86	100.00	7
Nova Scotia	70.37	29.63	100.00	27
Quebec	34.29	65.71	100.00	35
<b>TOTAL</b>	<b>49.01</b>	<b>50.99</b>	<b>100.00</b>	<b>304</b>

<u>CROWN</u>	1	2	TOTAL	N
British Columbia	55.88	44.12	100.00	68
Alberta	46.00	54.00	100.00	50
Ontario	46.36	53.64	100.00	110
New Brunswick	44.44	55.56	100.00	9
Nova Scotia	29.41	70.59	100.00	17
Quebec	36.76	63.24	100.00	68
<b>TOTAL</b>	<b>45.34</b>	<b>54.66</b>	<b>100.00</b>	<b>322</b>

TABLE 51

Views on Allowing Judges to Specify a Minimum Time to be Served

Before Eligibility for Early Release

47. Do you think that the sentencing judge should be able to specify, at the time of sentencing, a minimum time that an offender sentenced to prison should have to serve before being eligible for early release? Croyez-vous que le juge devrait avoir la discrétion de fixer la durée qu'un condamné est tenu de purger en prison avant d'être éligible à la libération conditionnelle?

1 - yes/oui

2 - no/non

<u>DEFENSE</u>	1	2	TOTAL	N
British Columbia	47.50	52.50	100.00	80
Alberta	35.00	65.00	100.00	40
Ontario	26.28	73.72	100.00	137
New Brunswick	37.50	62.50	100.00	8
Nova Scotia	43.33	56.67	100.00	30
Quebec	25.00	75.00	100.00	36
<b>TOTAL</b>	<b>34.14</b>	<b>65.86</b>	<b>100.00</b>	<b>331</b>

<u>CROWN</u>	1	2	TOTAL	N
British Columbia	85.33	14.67	100.00	75
Alberta	77.36	22.64	100.00	53
Ontario	78.51	21.49	100.00	121
New Brunswick	80.00	20.00	100.00	10
Nova Scotia	73.68	26.32	100.00	19
Quebec	76.06	23.94	100.00	71
<b>TOTAL</b>	<b>79.08</b>	<b>20.92</b>	<b>100.00</b>	<b>349</b>

SENTENCING

A Survey of Crown and Defence Counsel

First, some questions about you.

Are you: Defence Counsel \_\_\_\_\_

Full-time Crown Counsel \_\_\_\_\_

Part-time Crown Counsel \_\_\_\_\_

What province do you practice in? \_\_\_\_\_

How long have you practiced criminal law? \_\_\_\_\_

What percentage of your time is spent on criminal cases? \_\_\_\_\_

Sentence Severity

1. Would you say that sentences handed down by the courts before which you usually appear are:

- \_\_\_ Too severe
- \_\_\_ About right
- \_\_\_ Not severe enough

2. In general, would you say that sentences handed down by the courts across Canada are:

- \_\_\_ Too severe
- \_\_\_ About right
- \_\_\_ Not severe enough

3. Which one of the following options would you favour in setting the mandatory minimum time to be served before eligibility for parole consideration for first degree murder:

- \_\_\_ Retain the present mandatory minimum of 25 years
- \_\_\_ Increase the present mandatory minimum of 25 years
- \_\_\_ Reduce the present mandatory minimum of 25 years
- \_\_\_ Reduce the mandatory minimum to 15-25 years, leaving the parole eligibility date to be set by the court (as in 2nd degree murder)
- \_\_\_ Abolish the mandatory minimum life penalty, replace it with a maximum penalty of life, leaving the actual sentence to the discretion of the judge

Other suggestions:

## Sentencing Variation

4. Do you think that there is unwarranted variation in the sentences handed down in your jurisdiction?

- There is a great deal of unwarranted variation
- There is some unwarranted variation
- There is no unwarranted variation

5. Do you think that there is unwarranted variation in the sentences handed down across Canada?

- There is a great deal of unwarranted variation
- There is some unwarranted variation
- There is no unwarranted variation

6. If you think that there is a problem of unwarranted variation in sentencing, which of the following do you think are reasons for this problem: (Check all that apply)

- Lack of consensus on the specific purpose(s) of sentencing
- Lack of consensus on the important factors to be considered in sentencing
- Different personal attitudes and/or approaches of judges to sentencing
- Lack of consensus on how severe sentences generally should be
- Lack of guidance from the Court of Appeal
- Lack of legislative guidance
- Lack of information available to judges about sentencing practices
- Variation in the abilities of Crown and defence counsel
- Availability of legal representation for the accused
- The wide range of seriousness of behaviour that can constitute a specific offence
- Other (please specify)

7. Do you think that the community in which a person lives (or in which an offence took place) is, in current practice, an important factor in the determination of the sentence?

- Yes, it is an important factor in most or all cases
- It is an important factor in some cases
- No, it is never or almost never an important factor in any case

8. Do you think that the community in which a person lives (or in which an offence took place) should be an important factor in the determination of the sentence?

- Yes, it should be an important factor in most or all cases
- It should be an important factor in some cases
- No, it should never or almost never be an important factor in any case

### Sentencing Guidelines

9. Which of the following ways of reducing unwarranted variation in sentences would you favour?

- The present system of guidance from the Court of Appeal in your province.
- An informal understanding among judges regarding what an average sentence should be for an offence, based on statistical analysis of current sentencing practice.
- A more explicit list of purposes or principles that should be considered by the judge in determining the sentence.
- An explicit statement or system of weighing the factors to be considered by the judge in determining the sentence.
- "Guideline" decisions which might come from the Court of Appeal of your province which might state, for example, the appropriate sentence for certain specific types of offences or the minimum "starting point" for particular kinds of cases.
- A legislated "presumptive sentence" or range of sentences for the "normal" or "average" instance of a particular offence.
- Some form of mathematical equation combining a number of different aspects of the case in such a way that each factor is given a specific weight in arriving at a sentence (e.g. a sentencing grid).

Other (please specify)

10. If there were to be guidelines, should the same guidelines apply to all provinces?

- Definitely yes
- Generally yes, but there might be some room for variation
- No

11. Should there be guidelines for non-carceral dispositions?

- Yes
- Possibly
- No

12. Would you favour a legislated list of aggravating and mitigating factors to be considered by the judge in the imposition of the sentence?

- Yes
- Possibly
- No

#### Plea Negotiation

13. What impact do plea negotiations have on the sentencing process (i.e. negotiations concerning charge, plea, sentence and fact bargaining)?

- A major impact
- A minor impact
- No impact at all

14. How often do you participate in such negotiations?

- Frequently
- Sometimes
- Rarely
- Never



15. How often do you participate in such negotiations where the exact charge is being discussed?

- Frequently
- Sometimes
- Rarely
- Never

16. How often do you participate in such negotiations where the submissions as to sentence are being discussed?

- Frequently
- Sometimes
- Rarely
- Never

17. How often do you participate in such negotiations where the facts to be disclosed to the court are being discussed?

- Frequently
- Sometimes
- Rarely
- Never

18. What is your attitude toward such negotiations?

(i) between defence and Crown counsel

- Strongly approve
- Approve
- Disapprove
- Strongly disapprove

(ii) where judges give an advance indication of the sentence they are likely to give

- Strongly approve
- Approve
- Disapprove
- Strongly disapprove

(iii) where judges participate in the negotiations

- Strongly approve
- Approve
- Disapprove
- Strongly disapprove

19. Are discussions involving plea more likely to occur for offences for which there is a mandatory minimum penalty?

- Yes
- No

20. Do mandatory minimum penalties cause Crown and defence counsel to enter into agreements that they would otherwise avoid?

- Yes, fairly often
- Yes, occasionally
- Only very rarely
- Never

21. Are there certain offences which as a matter of policy in your province are never the subject of negotiations?

- Yes
- No
- If yes, please list those offences

22. Should there be a sentence discount for a plea of guilty?

- Yes, for all offences
- Yes, for some offences
- No

23. In your experience, who initiates most plea negotiations?

- Crown counsel
- Defense counsel
- Judge
- Other (e.g. police) Please specify:

24. In your experience, how active a role does the judge play in plea negotiations?

- The judge is never directly involved
- The judge is occasionally involved either in Chambers or in court
- The judge is frequently involved in Chambers
- The judge is frequently involved in court
- The judge is frequently involved in both court and in Chambers
- Judges of certain courts never get involved in plea negotiations (please specify which courts):

25. In what proportion of the cases you handle does an offender face multiple charges relating to a single transaction?
- 76 - 100%  
 51 - 75%  
 26 - 50%  
 0 - 25%
26. How often do Crown counsel and/or police lay more (or more serious) charges than they might expect to result in conviction, in order to gain a stronger position in plea negotiations?
- In all or most cases  
 In many cases  
 In a few cases  
 Never or almost never
27. In your experience, how active a role do the police play in plea negotiations with the accused or his/her lawyer?
- Very active role  
 Active role  
 Insignificant role  
 No role
28. In your experience, how active a role does the accused person himself/herself play in the negotiation process?
- Very active role  
 Active role  
 Insignificant role  
 No role
29. Do you favour legislative control of plea negotiation?
- Yes  
 No
30. Do you favour legislative prohibition of plea negotiation?
- Yes  
 No
31. Do the judges that you appear before favour submissions from defence counsel as to the type of sentence to impose?
- Always  
 Sometimes  
 Never

32. Do the judges that you appear before favour submissions from Crown counsel as to the type of sentence to impose?

- Always
- Sometimes
- Never

33. Do the judges that you appear before favour submissions from defence counsel as to the quantum of sentence to impose?

- Always
- Sometimes
- Never

34. Do the judges that you appear before favour submissions from Crown counsel as to the quantum of sentence to impose?

- Always
- Sometimes
- Never

35. In cases where there have been plea negotiations, does the judge usually accept a joint submission if one is made?

- Yes, always
- Yes, in most cases
- Sometimes
- Rarely
- Never

#### Other Sentencing Issues

36. At present, how important do you think each of the following factors is in determining sentence: Very important (3); Somewhat important (2); Not at all important (1)

- The legislated maximum penalty for that offence
- Appeal Court decisions from your province
- Appeal Court decisions from other provinces
- The individual judge
- Crown or defence counsel
- The particular offence
- Offender's criminal record
- Other characteristics of the offender (e.g. age, sex, etc.)
- Frequency of the offence in the community
- Community values with respect to the offence
- Other (please specify)

37. Now we would like to ask you how important the following factors should be in determining sentence: Very important (3); Somewhat important (2); Not at all important (1)

- The legislated maximum penalty for that offence
- Appeal Court decisions from your province
- Appeal Court decisions from other provinces
- The individual judge
- Crown or defence counsel
- The particular offence
- Offender's criminal record
- Other characteristics of the offender (e.g. age, sex, etc.)
- Frequency of the offence in the community
- Community values with respect to the offence
- Other (please specify)

38. Without knowing the identity of the judge hearing the case, can you predict reasonably accurately the sentence that will be handed down in a particular case where there has been no plea negotiation?

- Yes, in most cases
- Yes, sometimes
- Rarely
- Never

39. Would it be useful, in the sentencing process, to have a reclassification of offences with maximum penalties geared closer to the sentences that are actually being imposed?

- Yes, it would be useful
- No, it would not be useful

40. Most maximum penalties are seldom imposed. Do you think this gives a false impression of sentencing to the public?

- Yes
- No

41. Do you think that mandatory supervision, as it presently exists, should be retained?

- Definitely yes
- Probably yes
- Probably no
- Definitely no

42. Should some form of earned remission continue to be available so that inmates who behave well in prison are released before the end of their sentence?

- Definitely yes
- Probably yes
- Probably no
- Definitely no

43. What is your reaction to the current system of parole?

- The current system of parole should be retained
- The current system of parole should be abolished
- The current system of parole should be changed

44. If you chose "changed", what, specifically, would you change?

45. Do you think that there should be some form of judicial control over parole and/or other early release decisions?

- Yes
- No

46. If there were to be some form of judicial control over early release, should it be limited to certain kinds of offences (e.g. violent offences)?

- Yes
- No

47. Do you think that the sentencing judge should be able to specify, at the time of sentencing, a minimum time that an offender sentenced to prison should have to serve before being eligible for early release?

- Yes
- No

48. Do you have any comments you wish to add about the role of the Crown in sentencing?

49. Finally, do you have any comments you wish to add about the role of defence counsel in sentencing?

Thank you very much for the time you have spent giving us your views.

DETERMINATION DE LA PEINESondage auprès des procureurs de la Couronne et de la défense

Pour commencer, quelques questions à propos de vous-même:

Etes-vous: Procureur de la défense \_\_\_\_\_  
 Procureur de la Couronne (à plein temps) \_\_\_\_\_  
 Procureur de la Couronne (à temps partiel) \_\_\_\_\_

Dans quelle province pratiquez-vous? \_\_\_\_\_

Depuis combien de temps pratiquez-vous le droit criminel? \_\_\_\_\_

Quel pourcentage de votre temps consacrez-vous à des causes criminelles? \_\_\_\_\_

La sévérité des peines (sentences)

1. Croyez-vous que les peines prononcées par les tribunaux devant lesquels vous plaidez sont:

\_\_\_ trop sévères  
 \_\_\_ plutôt justes  
 \_\_\_ pas assez sévères

2. En général, diriez-vous que les peines prononcées par les tribunaux à travers le Canada sont:

\_\_\_ trop sévères  
 \_\_\_ plutôt justes  
 \_\_\_ pas assez sévères

3. Laquelle des options suivantes favorisez-vous pour ce qui est de la durée minimale d'incarcération que doit purger un détenu coupable de meurtre au premier degré avant d'être éligible à la libération conditionnelle?

\_\_\_ Conserver la peine minimale actuelle d'une durée de 25 ans  
 \_\_\_ Augmenter la durée de la peine minimale actuelle  
 \_\_\_ Réduire la durée de la peine minimale actuelle

\_\_\_ Réduire la durée de la peine minimale actuelle à un intervalle de 15/25 ans, laissant au juge la discrétion de fixer la date d'éligibilité pour la libération conditionnelle, comme c'est actuellement le cas pour le meurtre au second degré

\_\_\_ Abolir l'actuelle peine minimale de 25 ans et la remplacer par une sentence maximale d'incarcération à vie, en laissant au juge la discrétion de déterminer la durée effective de la peine

\_\_\_ Autres suggestions



## La variation dans la détermination de la peine

4. Croyez-vous qu'il existe une variation injustifiée (disparité) dans les peines prononcées dans la juridiction dans laquelle vous exercez votre pratique?

- Oui, il y a beaucoup de variation injustifiée
- Il y a un certain degré de variation injustifiée
- Non, il n'y a pas de variation injustifiée

5. Croyez-vous qu'il existe une variation injustifiée (disparité) dans les peines qui sont prononcées par les tribunaux canadiens, considérés dans leur ensemble?

- Oui, il y a beaucoup de variation injustifiée
- Il y a un certain degré de variation injustifiée
- Non, il n'y a pas de variation injustifiée

6. Si vous croyez qu'il existe un problème relatif à la variation injustifiée (disparité) dans la détermination des peines, quelles sont les raisons de ce problème (indiquez dans la liste qui suit toutes les raisons qui vous semblent pertinentes):

- Un manque de consensus sur le ou les buts spécifiques de la détermination des peines
- Un manque de consensus sur les facteurs qui doivent être considérés importants dans la détermination d'une peine
- Les attitudes personnelles et les approches différentes de la part des juges qui déterminent les peines
- Un manque de consensus sur la sévérité que devraient généralement revêtir les peines
- Un manque de directives des cours d'Appel
- Un manque d'information des juges sur les pratiques de leurs confrères en matière de détermination de la peine
- Un manque de directives législatives
- Des différences dans les aptitudes des procureurs de la Couronne et de la défense
- La possibilité pour un accusé (ou un condamné) d'être légalement représenté devant le tribunal
- Les grandes différences de gravité entre les divers comportements criminels qui sont susceptibles de recevoir la même étiquette légale (par ex. le vol qualifié)
- Autres raisons (précisez, s.v.p.)

7. Pensez-vous que le type de communauté dans lequel une personne réside (ou dans lequel une infraction a été commise) est effectivement, dans la pratique actuelle, un facteur important dans la détermination des peines?

- Oui, c'est un facteur important dans tous ou la plupart des cas
- C'est un facteur important dans quelques cas
- Non, ce n'est jamais ou presque jamais un facteur important

8. Pensez-vous que le type de communauté dans lequel une personne réside (ou dans lequel une infraction a été commise) devrait être un facteur important dans la détermination de la peine?

- Oui, ce devrait être un facteur important dans tous ou la plupart des cas
- Ce devrait être un facteur important dans quelques cas
- Non, ce ne devrait pas être jamais ou presque jamais un facteur important

#### Lignes directrices en matière de détermination de la peine

9. Lequel (ou lesquels) parmi les moyens qui suivent favoriserez-vous pour réduire la variation injustifiée dans la détermination des peines?

Le système de directives actuel de la part de la Cour d'Appel de votre province

Une entente tacite entre les juges sur la sentence moyenne que réclame une infraction donnée (cette entente serait fondée sur une analyse statistique des pratiques courantes en matière de détermination de la peine)

Un énoncé plus explicite des objectifs et des principes qui devraient être pris en compte par le juge en déterminant sa sentence

Un système de pondération plus précis des facteurs qui devraient être pris en compte par le juge en déterminant sa sentence

Des lignes directrices énoncées par la Cour d'Appel dans le cadre d'un jugement dans une cause (ce type de jugement pourrait, par exemple, déterminer la peine appropriée pour un type donné d'infraction ou fixer le seuil de sévérité à partir duquel une peine est proportionnée à la gravité d'une infraction).

Une sentence "présomptive" ou une gamme de sentences fixées par la loi pour les occurrences "normales" ou habituelles d'un type donné d'infraction

Une procédure mathématique qui combine divers facteurs caractérisant une infraction criminelle et qui assigne un poids à ces facteurs de manière à parvenir à une sentence proportionnée à l'infraction commise et aux circonstances qui la définissent (par ex., une "grille" de détermination de la peine comme il s'en trouve dans divers états américains)

10. Si l'on établissait, sous une forme ou une autre, des lignes directrices en matière de détermination de la peine, est-ce que ces lignes directrices devraient être les mêmes dans chacune des provinces canadiennes?

- Oui, absolument
- Oui, généralement; on devrait ménager une marge de variations
- Non

11. Devrait-on établir des lignes directrices pour les peines non-carcérales (amendes, etc.)?

- Oui
- Possiblement
- Non

12. Est-ce que vous supporteriez le projet d'intégrer à la loi une liste de circonstances aggravantes et atténuantes, qui devraient être prises en compte par le juge dans l'imposition de sa sentence?

- Oui
- Possiblement
- Non

#### La négociation du plaidoyer

13. Quel effet les négociations de plaidoyers ont-elles sur le processus de la détermination des peines (l'expression "négociation du plaidoyer réfère ici à la fois à la négociation de(s) l'accusation(s) portée(s), du plaidoyer, de la sentence et des faits qui seront soumis au tribunal).

- Un effet majeur
- Un effet mineur
- Aucun effet

14. A quelle fréquence participez-vous à ces négociations?

- Souvent
- Parfois
- Rarement
- Jamais

15. A quelle fréquence participez-vous à des négociations dont l'objet porte sur la nature exacte de(s) l'accusation(s) qui sera (seront) portées?

- Souvent
- Parfois
- Rarement
- Jamais

16. A quelle fréquence participez-vous à des négociations dont l'objet porte sur la peine qui sera imposée par le juge?

- Souvent
- Parfois
- Rarement
- Jamais

17. A quelle fréquence participez-vous à des négociations dont l'objet porte sur les faits qui seront dévoilés devant le tribunal?

- Souvent
- Parfois
- Rarement
- Jamais

18. Quelle est votre attitude par rapport aux types suivants de négociations?

(i) Les négociations entre la Couronne et la défense:

- Fortement d'accord
- D'accord
- En désaccord
- Fortement en désaccord

(ii) Les négociations où le juge donne une indication sur la sentence qu'il est susceptible d'imposer:

- Fortement d'accord
- D'accord
- En désaccord
- Fortement en désaccord

(iii) Les négociations où le juge participe activement:

- Fortement d'accord
- D'accord
- En désaccord
- Fortement en désaccord

19. La négociation du plaidoyer est-elle plus probable pour des infractions impliquant une peine minimale stipulée par la loi?

- Oui
- Non

20. L'existence de peines minimales contraint-elle la Couronne et la défense à conclure des ententes qui ne seraient pas conclues si ce n'était du fait qu'il existe dans le cas échéant une peine minimale.

- Oui, assez souvent
- Oui, à l'occasion
- Rarement
- Jamais

21. Se trouve-t-il des infractions pour lesquelles, dans la province où vous pratiquez, des politiques judiciaires interdisent la négociation du plaidoyer (en son sens large)?

- Oui
- Non
- Si oui, lesquelles?

22. Devrait-il exister une réduction de sentence pour un plaidoyer de culpabilité?

- Oui, pour toutes les infractions
- Oui, mais seulement pour certaines infractions
- Non

23. Selon votre propre expérience, quelle est la partie qui engage initialement les négociations de plaidoyer?

- Le procureur de la Couronne
- Le procureur de la défense
- Le juge
- Autre (par ex. la police) précisez, s.v.p.

24. Selon votre propre expérience, à quel point le juge assume-t-il un rôle actif dans la négociation du plaidoyer?

- Le juge n'est jamais directement impliqué
- Le juge est parfois impliqué en Chambre ou dans la salle d'audience
- Le juge est fréquemment impliqué en Chambre
- Le juge est fréquemment impliqué dans la salle d'audience
- Le juge est fréquemment impliqué à la fois en Chambre et dans la salle d'audience
- Les juges de certains tribunaux ne s'impliquent jamais dans les négociations de plaidoyer (spécifiez quels sont ces tribunaux):

25. Parmi les causes dans lesquelles vous êtes impliqué(e), quelle est la proportion où un contrevenant fait l'objet d'accusations multiples pour un même événement criminel?

- 100%-76%
- 75%-51%
- 50%-26%
- 25%-0%

26. Combien de fois le Procureur de la Couronne et/ou la police portent-ils plus d'accusations (ou des accusations plus graves) que ce qu'ils sont en droit d'espérer prouver, pour s'assurer une position plus forte dans la négociation de plaidoyer?

\_\_\_ Dans tous les cas ou la plupart des cas

\_\_\_ Dans plusieurs cas

\_\_\_ Dans quelques cas

\_\_\_ Jamais ou presque

27. Selon votre expérience, la police joue-t-elle un rôle actif dans la négociation du plaidoyer avec l'accusé et/ou son avocat(e), par ex. dans la détermination des accusations.

\_\_\_ Un rôle très actif

\_\_\_ Un rôle actif

\_\_\_ Un rôle négligeable

\_\_\_ Aucun rôle

28. Selon votre expérience, l'accusé joue-t-il lui-même un rôle actif dans le processus de la négociation du plaidoyer (entendu en son sens large)?

\_\_\_ Un rôle très actif

\_\_\_ Un rôle actif

\_\_\_ Un rôle négligeable

\_\_\_ Aucun rôle

29. Approuvez-vous l'exercice d'un contrôle législatif sur la négociation du plaidoyer (entendu en son sens large)?

\_\_\_ Oui

\_\_\_ Non

30. Approuvez-vous l'interdiction légale de la négociation du plaidoyer?

\_\_\_ Oui

\_\_\_ Non

31. Les juges devant lesquels vous plaidez accueillent-ils avec faveur les sousmissions de la défense sur le type de sentence qu'il convient d'imposer (par ex. amendes ou probation vs. sentence d'incarcération).

\_\_\_ Toujours

\_\_\_ Quelquefois

\_\_\_ Jamais

32. Les juges devant lesquels vous plaidez accueillent-ils avec faveur les sousmissions de la Couronne sur le type de sentence qu'il convient d'imposer (par ex. amendes ou probation vs. sentence d'incarcération).

\_\_\_ Toujours

\_\_\_ Quelquefois

\_\_\_ Jamais

33. Les juges devant lesquels vous plaidez accueillent-ils avec faveur les soumissions de la défense sur la quantité de la peine qu'il convient d'imposer (par ex. le nombre de mois ou d'années pour une peine d'incarcération ou le montant des amendes).

- Toujours
- Quelquefois
- Jamais

34. Les juges devant lesquels vous plaidez accueillent-ils avec faveur les soumissions de la Couronne sur la quantité de la peine qu'il convient d'imposer (par ex. le nombre de mois ou d'années pour une peine d'incarcération ou le montant des amendes).

- Toujours
- Quelquefois
- Jamais

35. Lorsqu'il y a eu négociation de plaider dans une cause, est-ce que le juge accepte habituellement les recommandations faites dans une soumission conjointe, si une telle soumission est présentée.

- Oui, toujours
- Oui, dans la plupart des cas
- Parfois
- Rarement
- Jamais

#### Autres questions sur la détermination de la peine

36. Dans les circonstances actuelles, quelle est, selon vous, l'importance qui est accordée aux facteurs suivants dans la détermination de la peine:

(évaluez l'importance des facteurs suivants selon cette échelle d'importance: très important (3); assez important (2); pas important (1)).

- Les peines maximum prévues par la loi pour une infraction donnée
- Les jugements de la Cour d'Appel dans votre province
- Les jugements de la Cour d'Appel dans d'autres provinces
- Les attitudes personnelles du juge
- Les aptitudes de la Couronne ou de la défense
- La nature de l'infraction
- Le dossier criminel du contrevenant



- Autres caractéristiques du contrevenant (sexe, âge, etc.)
- La fréquence de l'infraction dans la communauté
- Les jugements de la communauté par rapport à la gravité de l'infraction
- Autres (précisez, s.v.p.)

37. Maintenant, si l'on vous demandait d'estimer quelle devrait être l'importance de ces mêmes facteurs dans la détermination d'une sentence, quelle serait votre évaluation: très important (3); assez important (2); pas important (1)?

- Les peines maximum prévues par la loi pour une infraction donnée
- Les jugements de la Cour d'Appel dans votre province
- Les jugements de la Cour d'Appel dans d'autres provinces
- Les attitudes personnelles du juge
- Les aptitudes de la Couronne ou de la défense
- La nature de l'infraction
- Le dossier criminel du contrevenant
- Autres caractéristiques du contrevenant (sexe, âge, etc.)
- La fréquence de l'infraction dans la communauté
- Les jugements de la communauté par rapport à la gravité de l'infraction
- Autres (précisez, s.v.p.)

38. Sans connaître l'identité du juge qui présidera le tribunal, pouvez-vous prédire (à l'intérieur de marges d'erreur raisonnables) la peine qui sera prononcée par la cour dans une cause où il n'y a pas eu de négociation du plaidoyer?

- Oui, dans la plupart des cas
- Oui, parfois
- Rarement
- Jamais

39. Serait-il utile pour la détermination des peines de procéder à une reclassification des infractions qui leur assignerait des peines maximum correspondant de façon plus étroites aux peines qui sont effectivement attribuées.

- Oui, cela serait utile  
 Non, cela ne serait pas utile

40. La plupart des peines maximum ne sont pas souvent imposées. Croyez-vous que cela produit une fausse impression de la détermination de la peine (du sentencing) auprès du public?

- Oui  
 Non

41. Croyez-vous que la surveillance obligatoire (mandatory supervision) devrait être maintenue dans son état actuel?

- Oui, absolument  
 Oui, probablement  
 Non, probablement  
 Non, absolument

42. Devrait-on conserver une remise de peine méritée, de telle sorte que les détenus qui se sont bien conduit lors de leur incarcération seraient d'être libérés avant l'expiration de leur sentence?

- Oui, absolument  
 Oui, probablement  
 Non, probablement  
 Non, absolument

43. Quelle est votre évaluation du système actuel de libération conditionnelle?

- Le système actuel devrait être conservé  
 Le système actuel devrait être aboli  
 Le système actuel devrait être modifié

44. Si vous pensez que le système actuel de libération conditionnelle doit être modifié, quelles sont les modifications spécifiques que vous apporteriez à ce système?

45. Croyez-vous qu'un contrôle judiciaire devrait être exercé sur les mesures de remise en liberté avant l'expiration de la peine (libération conditionnelle ou remise en liberté sous surveillance obligatoire)?

Oui

Non

46. Si un contrôle judiciaire devait s'exercer sur les mesures de remise en liberté avant l'expiration de la peine, croyez-vous qu'il devrait être limité à certaines infractions (par exemple, les infractions violentes contre la personne)?

Oui

Non

47. Croyez-vous que le juge devrait avoir la discrétion de fixer la durée qu'un condamné est tenu de purger en prison avant d'être éligible à la libération conditionnelle?

Oui

Non

48. Est-il d'autres commentaires que vous aimeriez faire sur le rôle du procureur de la Couronne dans le processus de détermination de la peine.

49. Finalement, est-il d'autres commentaires que vous aimeriez faire sur le rôle de l'avocat de la défense dans le processus de détermination de la peine.

Nous vous remercions beaucoup du temps que vous avez consacré à remplir ce questionnaire.











